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INCOME-TAX LAW AND ACCOUNTS

BY

BANWARI LAL M. A., B. COM.,
Professor of Advanced Accountancy, Auditing
and Income-Tax Law,
Meerut College, Meerut.

PUBLISHERS

JAI PRAKASH NATH & CO.,

PUBLISHERS & BOOK-SELLERS,

MEERUT.

Pr. Rs. 6/3/-

Published by
L. GOPINATH
Prop.
JAI PRAKASH NATH & CO.

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Printed by
B. N. RASTOGI
at the
BHASKAR PRESS,
MEERUT

PREFACE

Income-tax Act is said to be one of the most complicated Acts of the Government of India and is not easily understood by the students for the M. Com., LL.B. and B. Com. Examinations and also by those starting career as Income-tax practitioners.

In this treatise attempts have been made to explain the implications of the Income-tax Law in a simple language. To understand the complexities of the Income-tax Law, however, it is necessary to read the basic law carefully without which it is not possible to have a thorough grounding of the subject. The whole of the Income-tax Act and the relevant portions of the Finance Act, 1951, have therefore, been incorporated in this book and the different sections have been explained with suitable examples and illustrations, wherever necessary.

To make it specially useful to students preparing for M. Com., LL. B. and B. Com. examinations of our universities questions set during the last several years have been solved on the basis of the present Income-tax Law and the Finance Act, 1951.

I am grateful to various writers on 'Income-tax, particularly to Shri S. Iyengar and Shri A. N. Aiyar, whose works I have freely consulted. Income-tax Manual (a Government of India publication) has also been of great use in preparing this volume.

A book of type has always scope for improvement and any suggestions in this direction will be thankfully received.

The author would feel amply remunerated if the book is found helpful by the students preparing for different examinations and others interested in the subject.

MEERUT COLLEGE,
January 1, 1952.

Banwari Lal

INDIAN INCOME-TAX ACT, 1922

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Income-tax Law and Accounts

SECTION 1

SHORT TITLE, EXTENT AND COMMENCEMENT

(1) This Act may be called the Indian Income-tax Act, 1922.

(2) It extends to the whole of India, except the State of Jammu and Kashmir, and applies also within that State to all persons in the service of the Government of India or the Government of any State other than the State of Jammu and Kashmir.

(3) It shall come into force on the 1st day of April, 1922.

Income-tax in India is governed by the Act of 1922. Since then, numerous changes have been made, the most important of them being the one introduced by the Amendment Act of 1939. The basic law, however, remains as it was in 1922. Several sections of the old Act have been deleted and many new ones have been added; but the rearranged number of sections remains practically the same as under the old Act.

Before the country was divided into India and Pakistan, and India was declared a sovereign democratic republic on August 15, 1947, the Indian Income Tax Act applied to the then British India only (including British Baluchistan and the Sonthal Paraganas); but now it extends to the whole of the Republic of India except the State of Jammu and Kashmir.

In India income-tax was first levied in the year 1860, as a measure to improve the finances of the Government necessitated

by heavy expenditure incurred during the first war of independence (1857). At that time it was considered only a temporary measure and no great importance was attached to it. The maximum amount of income exempted from payment of income-tax was Rs. 200, and the rates were—

Incomes between Rs. 200 and Rs. 500	2 per cent.
Incomes above Rs. 500	4 per cent.

Since then there have been many changes in the levy and administration of income tax. In the beginning it was never thought that income-tax would be so potential a source of income to the Government as it came to be. Once or twice it was even thought a failure in this country. But to-day income-tax is one of the most important sources of revenue to the Government as would appear from the fact that according to the budget of the Central Government for 1951-52 the expected yield for the current financial year under this head (Income-tax and corporation-tax) is put at Rs. 165 crores. The maximum amount exempted from payment of income-tax by the Finance Act of the current year is Rs. 3,600, (Rs. 7,200 in the case of Hindu undivided family) and the rate of tax ranges from 9 pies per rupee to 4 annas per rupee plus 5 per cent. surcharge, on the basis of slab system of taxation. In addition to income-tax now there is another tax on income which is described as an additional duty of income-tax and which is governed by the same Income-tax Act, that is, super-tax, the maximum rate of which for the assessment of 1951-52, is 8/6 per rupee plus 5 per cent. surcharge.

Income-tax is levied and collected by the Central Government and is distributed between the Union and the States. Article 270 of the constitution of India lays down that taxes on income other than agricultural income, shall be levied and collected by the Government of India and distributed between the Union and the States in a particular manner.

SECTION 2

DEFINITIONS

(1) *Agricultural Income* means,—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in Taxable territories or subject to a local rate assessed and collected by officers of the Government as such;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver

of the rent-in-kind by reason of his connection with the land, required as a dwelling-house, or as a store-house, or other out-building.

According to the above definition agricultural income is the income derived from land used for agricultural purposes, in any one or more of the following forms:—

- (i) Rent or revenue derived from land in cash or kind;
- (ii) Produce of the land by agriculture;
- (iii) By converting agricultural produce received under (i) or (ii) above into marketable form;
- (iv) From sale of agricultural produce under (i), (ii) or (iii) above;
- (v) From buildings required and used for agricultural purposes.

The land must be used for agricultural purposes and must be assessed to land revenue in taxable territories or should be subject to a local rate assessed and collected by officers of the Government.

'Nazars' or 'Salamis' paid by the tenant to the landlord in consideration of the latter's granting him certain concessions or rights in respect of land is considered as agricultural income.

The following receipts do not come under agricultural income, and therefore, are not exempted from tax.

- (i) Payments out of income derived from agricultural land to a third party in respect of certain considerations, such as maintenance allowance;
- (ii) Payments received as monthly or annual allowance from the income of an agricultural estate as a matter of compromise to forego the right to share in the income of the estate;
- (iii) Allowance received by a co-owner as remuneration for managing the joint estate. It is treated as salary and taxed as such. His share of estates income as a co-owner is, of course, agricultural income;

- (iv) Interest on cash loans to tenants payable at harvest time in the form of the produce of the land;
- (v) Commission of the landlord for selling the produce of the tenant.

Interest on arrears of rent

On this point there have been conflicting decisions of various High Courts in India. The High Courts of Calcutta, Madras and Rangoon have held that such interest is not agricultural income, but the High Court of Patna has taken a different view. The decision of the Privy Council is that interest on arrears of rent payable in respect of land used for agricultural purposes is not agricultural income within the definition of that expression in section 2 (1) of the Income-Tax Act, and is, therefore, not exempt from payment of income-tax. Whether the Supreme Court of India will agree with this view of the Privy Council is yet to be seen.

Income from Forests

Agriculture means raising from land, with the help of human labour and skill, such products which take nutrition from it and which are both useful and valuable. It will include, therefore, *growing of forests* for the purpose of timber or even firewood. *Natural grown forests* on which human labour or skill is not applied at any stage or for the growing of which no tilling has ever been done, are, therefore, not included in agriculture, even though they may be protected and preserved by keeping forest guards. The sale of produce of such forests—fruits, bark, leaves etc.—is not agricultural income. Income of forest contractors merely for cutting down trees and selling timber is not agricultural Income.

Income derived from manufacture of toddy is agricultural income if the cultivator receives it from trees on his land, otherwise not. *Grazing of cattle* is an agricultural operation and, therefore, income from this operation is treated as agricultural income.

Income from dairying is from trade and not from agriculture if cattle are kept in urban area and are stall fed. But if on the other hand they are mainly fed on the ground the income from the sale of their milk is agricultural income. Between the two extremes it has to be decided on the merits of each individual case whether in a particular case the income is agricultural income or not.

In the same way in the case of *poultry farming*, if the industry depends to a material extent upon the fruits of the land used for the purpose the income is agricultural income. *Income from land without tilling it* or without performing other agricultural operations on it is not agricultural income, e. g., income from land used for :

Manufacturing salt,
making bricks or potteries or working quarries,
storing timber or agricultural produce,
holding temporary markets or shops,
stands for motors, carts or tongas.

Income received by a landlord from *leasing out land for fishing* is not agricultural income.

Income derived by performing certain processes to the agricultural produce.

Income from the sale of agricultural produce in its natural form or after applying such process or processes as are ordinarily employed by a cultivator to make it fit to be taken to the market for sale is agricultural income. Income due to any further process is income from manufacture and thus not exempt from tax. In case of certain types of industries there is a combined income from agriculture and business, and therefore, it is partly exempt and partly taxable. In pursuance of the powers conferred by section 59 of the Income Tax Act, the Central Board of Revenue have framed Rules 23 and 24 in order to determine the proportion of agricultural income in a combined industry. The two rules run as under—

Rule 23 : (1) In the case of income which is partially agricultural income as defined in section 2 and partially income chargeable to income-tax under the head "business", in determining that part which is chargeable to income tax the market value of any agricultural produce which has been raised by the assessee or received by him as rent in-kind and which has been utilized as raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted, and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

(2) For the purpose of sub-rule (1) "market value" shall be deemed to be :—

(a) Where agricultural produce is originally sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render it fit to be taken to the market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made.

(b) Where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

- (1) the expenses of cultivation ;
- (2) the land revenue or rent paid for the area in which it was grown ; and
- (3) such amount as Income-tax Officer finds, having regard to all the circumstances in each case, to represent a reasonable rate of profit on the sale of produce in question as agricultural produce.

Rule 24 : Income derived from sale of tea grown and manufactured by the seller in the taxable territory of India shall be computed as if it were income derived from business, and 40 per cent. of such income shall be deemed to be income, profits and gains liable to tax :

Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously been abandoned.

Income from rubber estates is treated as business profit and not as agricultural income. Expenses of re-plantation of rubber garden is treated as revenue expense in earning the above profit and is therefore, usually, allowed to be deducted therefrom.

The cultivator or the receiver of rent-in-kind can sell the produce at the farm or can take it to the market and sell it there. He can also keep a stall or shop for selling the produce without affecting his right of total exemption.

Agricultural income earned in the course of money lending business

When a moneylender advances loan and takes a usufructuary mortgage of the borrowers' agricultural land, the income from land in lieu of interest, or even also towards part payment of the debt, is agricultural income, and thus exempt from income-tax. In such a case it is presumed that the transaction is genuine—the creditor really goes into possession of property, pays the government revenue and collects rents etc. If the mortgage is a simple mortgage or it is only given a colour of usufructuary mortgage to avoid payment of income-tax on interest on it, such collection of rent by the lender is not agricultural income.

Foreign agricultural income

Agricultural income from outside the taxable territories is not agricultural income for the purpose of the Income Tax Act, because the land from which it is derived is not assessed to land revenue in the taxable territory, and, therefore, is not exempt from payment of tax.

Agricultural income from buildings

Income from buildings owned and occupied by the cultivator or the landlord for his dwelling, or for the purpose of storing, or processing the agricultural produce, is agricultural income and thus exempt from tax. But the building must be on, or in the immediate vicinity of, the land.

According to the provisions of Sec. 4 (3) (viii) agricultural income is totally exempt from both income-tax and super-tax. It is absolutely ignored and is not included in the total income even for the purpose of determining the rate of tax. State Governments are, however, empowered to levy agricultural income tax and some of them have begun to do so

(2) *Assessee* means a person by whom income-tax is payable.

It also means a person against whom income-tax proceedings are instituted, it being immaterial whether as a result of the Income-tax officers judgment he is, or is not, required to pay tax. The word 'person' includes—

- (a) an individual,
- (b) a company, or association or body of individuals, whether incorporated or not,
- (c) a Hindu undivided family,
- (d) a Local Authority.

An Official Receiver appointed by the High Court for certain property is treated as assessee in respect of income from that property. In respect of the property of a deceased person the executor, the administrator or other legal representative of the deceased is treated as assessee. If any person who is required to deduct tax under section 18 does not deduct tax or after deducting fails to pay it, he will be deemed to be an assessee in default in respect of such tax.

(3) *Appellate Assistant Commissioner* means a person appointed to be an Appellate Assistant Commissioner of Income-tax under section 5.

The Central Government appoints as many—

- (i) Appellate Assistant Commissioners and
- (ii) Inspecting Assistant Commissioners.

as it thinks necessary. Appellate Assistant Commissioners are directly under the Control of the Central Board of Revenue and their duties are to hear appeals of the assesseees against the judgments of Income-tax officers.

(4) *Business* includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

Definition of the word business is important because at several places in the Act it has definitely to be determined whether a particular pursuit of the assessee is business or not. The essential features of a business are:—

(a) There must be a regular course of dealings or a continuity of transactions. Under Section 10, profits of an isolated transaction may be taxable if the transaction is in the nature of trade.

(b) The idea should be to resell the goods bought and earn a profit thereon. Of course sometimes profit may not be earned or may not even be wished for.

(c) Ordinary commercial methods should be employed in buying and selling the goods, *e. g.*, opening of an office, appointment of an agent, placing a noticeboard, issuing of handbills, circulars, advertisements, etc. etc.

Illegal Business

Profits of illegal business are not exempt from tax. Income-tax Act is not necessarily restricted in its application to lawful business only. Profits of even invalid contract or illegal business are taxed if ordinary commercial methods are adopted in earning them. Income from house-breaking or burglary is not taxable because no commercial methods are adopted by the perpetrator of such acts.

(4A) *Capital asset* means property of any kind

held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

- (i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation;
- (ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;
- (iii) any land from which the income derived is agricultural income.

Any profits or gains arising from the sale, exchange or transfer of a capital asset is taken as 'Capital Gain' under the Indian Income-tax Act as amended by Act XXII of 1947 which came into force on 31st March 1947. According to this amendment capital profits derived after 31st March 1946 were subjected to Capital Gains Tax. With effect from 1st April 1949, the Capital Gains tax was abolished, so that it remained in force for 2 years only—Assessments of 1947-48 and 1948-49. Capital profits earned from 1st April 1946 to 31st March 1948 only were subject to this tax.

(4B) *Central Board of Revenue* means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924;

(5) *Commissioner* means a person appointed to be a commissioner of Income Tax under Section. 5;

(6) *Company* means—

- (i) any Indian company, or
- (ii) any association, whether incorporated or not and whether Indian or non-Indian which is or was assessable or was assessed, as a com-

pany for the assessment for the year ending on 31st day of March, 1948, or which is declared by general or special order of the Central Board of Revenue to be a company for the purpose of this Act;

Definition of Company—Amendment in 1948

Company means an Indian company as defined in clause (7A) of this Section or any Indian or non-Indian Association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purpose of this Act. For the purposes of the Income-tax companies can, therefore, be divided into two classes: (i) Indian Companies falling within the definition as per the Indian Companies Act and having their registered office in the taxable territories, and (ii) Indian or non-Indian associations, whether incorporated as companies or not, which are declared to be companies by the Central Board of Revenue. In Indian Income Tax Law the word company has thus a wider significance than what it has in the Indian Companies Act.

Definition of Company—Amendment in 1949

“Company means (i) any Indian company, or (ii) any association, whether incorporated or not and whether Indian or non-Indian which is or was assessable, or was assessed as a company for the assessment for the year ending on 31st day of March 1948, or which is declared by general or special order of the Central Board of Revenue to be a company for the purpose of this Act.”

Company, therefore, now means :—

- (i) any Indian company;
- (ii) all non-Indian companies or associations which are, or were, assessable or were assessed as companies for the assessment for the year ending 31st day of March, 1948;
- (iii) all companies or associations which may be declared by general or special order of the Central Board of Revenue to be companies for the purpose of Income-tax Act.

Companies formed and registered under a law in force in any of the merged states the registered offices of which are situated in the taxable territories are also Indian companies.

A Chamber of Commerce or a Trade Association registered under Section 26, of the Indian Companies Act comes under the above definition of company and as such is liable to be taxed on its income although profit-making may not be its object.

Subsidiary Companies are separately taxable from the parent company. In this respect the following remark was made by Lord Maugham in *Odhams Press Ltd. Vs Cook*:

“Limited companies which carry on business are separate taxable persons and the profits and gains of their several businesses are separate profits and gains for the purposes of income-tax. This is none the less true if one of the companies should be a parent company and the other or others may be its subsidiaries of which the shares are held or owned by the parent company.”

(6 A) *Dividend* includes—

(a) any distribution by a company of accumulated profits, whether capitalized or not, if such distribution entails the release by the company to its share-holders of all or any part of the assets of the company;

(b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not;

(c) any distribution made to the share-holders of a company out of accumulated profits of the company on the liquidation of the company.

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included; and

(d) any distribution by a company on the reduc-

tion of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the first day of April, 1933, whether such accumulated profits have been capitalized or not;

Provided that 'dividend' does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (c) or (d);

Provided further that the expression 'accumulated profits, wherever it occurs in this clause, shall not include capital gains arising before the first day of April, 1946, or after the 31st day of March, 1948;

According to the provisions of the Indian Company Law profits of a Joint Stock Company cannot be claimed by its shareholders unless and until the company declares the dividend. The company, if it so desires, may not declare profits to the shareholders; it may convert them into capital as against the whole world, including the government claiming them for taxing or any other purpose. Taking the advantage of this provision the shareholders could avoid payment of super tax on their share of company's profits by accumulating them in the hands of the company and receiving after converting them into capital. Dividend is now, therefore, so defined as to defeat any effort on the part of share holders to avoid payment of super-tax. In addition to dividend declared by a company as such, four kinds of advantages, (as given in this section), received by the share-holder are treated as receipt of dividend for income-tax purposes. Further, Sec 23A of the Income-Tax Act gives power to the Income-tax Officer to assess individual members of certain companies in respect of their share in company's profits even though the same is not declared as dividend by the company.

(6 AA) *Earned Income* means any income of an assessee who is an individual, Hindu undivided family, unregistered firm or other association of persons not being a company, a local authority, a registered firm or a firm treated as registered under clause (b) of sub-section (5) of section 23—

(a). Which is chargeable under the head “salaries”;
or

(b) Which is chargeable under the head “profits and gains of business, profession or vocation” where the business, profession or vocation is carried on by the assessee or, in the case of firm, where the assessee is a partner actively engaged in the conduct of business, profession, or vocation; or

(c) Which is chargeable under the head “other sources” if it is immediately derived from personal exertion or represents a pension or superannuation or other allowance given to the assessee in respect of his past services or the past services of any deceased person;

and includes any such income which, though it is the income of another person, is included in the assessee’s income under the provisions of this act, but does not include any such income which is exempt from tax under sub-section (2) of section 14 or under a notification issued under section 60;

According to the above definition—

(i) **Earned Income Relief** is granted to the following classes of assessees —

(a) an individual;

(b) an Hindu undivided family;

(c) an unregistered firm or other association of persons.

Note. — **Earned Income Relief** is not granted to a company, a local authority, a registered firm or a firm treated as registered firm.

(ii) **Earned Income Relief** is granted on the following main classes of income:—

(a) Salaries, including pension or superannuation or other allowance given to the assessee in respect of his past services or the past services of any deceased person;

(b) profits and gains of business, profession or vocation; and (c) income from other sources provided personal exertion is involved.

Earned Income Allowance is granted on the earned income of another person which is included in the assessee's total income under section 16 (3), such as share of profits of an assessee's wife or minor child when they are partners with him in any business. But **Earned Income Allowance** is not granted on income exempt under section 14 (2), that is—

(a) share of profit from an unregistered firm or other association of persons which has already been taxed;

(b) unremitted income earned in India outside the taxable territories;

and on income exempt by notification issued under sec. 60.

Note:—For further information on **Earned Income Relief** refer to Section 15 A — Exemption of portion of **Earned Income**.

(6B) *Firm, partner, and partnership* have the same meaning respectively as 'in the Indian Partnership Act, 1932; provided that the expression **Partner** includes any person who being a minor has been admitted to the benefits of partnership.

These terms are defined in the Indian Partnership Act as follows:—

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually 'partners' and collectively a 'firm', and the name under which their business is carried on is called *firm name*.

(6C) *income* includes anything included in *dividend* as defined in clause (6A) and anything which under explanation 2 to sub-section (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-sections and any sum deemed to be profits under the second proviso to clause (vii) of the sub-section (2) of section 10 and any capital gain chargeable according to the provisions of section 12B and the profits of any business of insurance carried on by a mutual insurance association computed in accordance with rule 9 in the schedule.

The Income-tax Acts nowhere define income any more than they define capital. They describe the sources of income and prescribe the methods of computing income, but discreetly refrain from defining what constitutes income. In fact as Lord Wright said "income is a word difficult and perhaps impossible to define in any precise general formula. It is a word of the broadest connotation."

The object of the above definition of income is that in addition to what is generally meant by income, for the purpose of income-tax it includes also the following five classes of income which strictly speaking are not income :

- (i) anything which falls within the definition of dividend contained in section 2 (6A);
- (ii) anything which is a profit in lieu of salary for the purposes of section 7 (1);
- (iii) any sum deemed to be profits under the second proviso to section 10 (2) (vii) *i. e.*, where the amount for which any building, machinery or plant sold as obsolete exceeds the written down value;
- (iv) any capital gain chargeable under section 12B; and in accordance with rule 9 of the schedule.
- (v) Profits of mutual insurance associations computed in accordance with rule 9 of the schedule.

In one of the leading cases following remark was made

with regard to the definition of income:—

“Income, their Lordships think, in this Act connotes a periodical monetary return coming in with some sort of regularity or expected regularity from definite sources. The source is not necessarily one which is expected to be continuously productive but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree or the crop of a field. It is essentially the produce of something which is often loosely spoken of ‘capital’....”

(6D) *Inspecting Assistant Commissioner* means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under section 5 ;

(7) *Income-tax Officer* means a person appointed to be an Income-tax Officer under section 5 ;

(7A) *Indian Company* means a company as defined in the Indian Companies Act, 1913, or a company formed and registered under a law in force in any of the merged States the registered office of which is situate in the taxable territories.

Note: Company has been defined in sub-section (6) of this section.

(8) *Magistrate* means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Central Government to try offences against this Act.

(8A) Omitted ;

(9) *Person* includes a Hindu undivided family and a local authority

Under the definition of “Assessee” the word ‘person’ is described to include—

- (i) an individual ;
- (ii) a company, or association or body of individuals, whether incorporated or not;
- (iii) a local authority.

(10) *Prescribed* means prescribed by rules made under this Act.

(11) *Previous Year* means in respect of any separate source of income, profits and gains—

(a) The twelve months ending on 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up.

Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit; or.

(b) In the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf; or

(c) Where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (b), or if the accounts of the assessee are made up to some other date than the 31st day of March and the

case is not one for which a period has been determined by the Central Board of Revenue under sub-clause (b), then at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date :

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it shall be deemed that there is no previous year; and

When the assessee is a partner in a firm, 'previous year' in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm.

Every year Income tax is charged from an assessee in respect of the current financial year but the basis for its computation is not his current year's income. It is calculated on the income of the previous year, or in other words on the income as per the accounts of the previous year, which means an year's accounts of the assessee which he has prepared and closed on any date within one year before the commencement of the current financial year. An assessee has the choice to select any accounting period according to his convenience. Closing of the books of accounts and preparation of the final statements entails pretty large amount of work, and, therefore, a businessman chooses to do this job only at a time when he is comparatively more free. Choice of the date of closing the books of accounts differs from business to business. Some business concerns close their books of accounts on 31st December each year, while others do so on 31st March, 30th June, 30th September or any other date convenient to them. Many Indian firms close their accounts on some Hindu festivals like Dashehra or Deepavali or on some dates of the Vikrami Era such as Chaitra sudi 1. or Asoj sudi 1. For the assessment of the year 1951-52 follow-

ing will be previous years of the firms closing their accounts on different dates:—

(a) firm closing its accounts on 31st March each year—previous year from 1st April 1950 to 31st March 1951;

(b) firm closing its accounts on 31st December each year—previous year from 1st January 1950 to 31 December 1950;

(c) firms closing their accounts on 30th June each year—previous year from 1st July 1949 to 30th June 1950;

(d) firms closing their accounts on 'Dashehra' or 'Deepavali' each year—previous year from 'Dashehra' or 'Deepavali' of 1949 to 'Dashehra' or 'Deepavali' of 1950, as the case may be.

For a newly started firm the first accounting period may not be of full 12 months; it may be a shorter period from the date of the commencement of the business to the date on which the assessee chooses to close his books of accounts each year. In such a case his first previous year will be of a period shorter than 12 months. If in the case of a newly started business full 12 months are not complete before the 1st of April of the present financial year and the businessman chooses to close his accounts after the 1st of April, there shall be no previous year for the assessment of the current financial year and, therefore, there shall be no assessment of the assessee for that year.

After once selecting the particular dates of his accounting year, the assessee has no option to change them unless he satisfies the Income-tax Officer that the change has become necessary. In allowing the assessee to change his accounting year the Income-tax Officer must see that by so allowing no portion of the assessee's income will escape tax.

An assessee is allowed to have a separate previous year for each separate source of income. For this purpose separate business interests of the assessee are treated as his separate

sources of income. The previous year of a partner in respect of his share of firm's income is the same as the previous year of the firm.

Commissioners of Income-tax are authorised by the Central Board of Revenue to accept an accounting year which is of more, or less, than 12 months as previous year of the assessee provided in no case it should be of more than 13 months and less than 11 months. In special cases an accounting year if it closes after the commencement of the present financial year may be treated as the previous year of the assessee for the assessment of the current financial year provided it closes at the most within one month of the commencement of the present financial year. Such a contingency regularly arises after every three years in the case of the firms preparing their accounts for each complete Vikrami year. Vikrami year sometimes begins in the month of March and sometimes it begins in the month of April. This is because the Vikrami year is a lunar year of 356 days and to adjust it with the solar year there is an additional month after every three years or so. The English calander year is more or less a solar year.

(12) *Principal Officer* used with reference to a local authority or a company or any other public body or any association, means—

(a) the secretary, treasurer manager or agent of the authority, company, body or association, or

(b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(13) *Public servant* has the same meanings in the Indian Penal Code;

Section 21 of the Indian Penal Code defines the expression "public servant".

(14) *Registered firm* means a firm registered under the provisions of Section 26-A.

For procedure of registration of firms refer to Sec. 26-A, and for assessments of registered firms refer to section 23 and the chapter on assessment proceedings.

(14A) *Taxable territories* means—

(a) as respect any period before the 15th day of August, 1947, the territories then referred to as British India, but including Berar,

(b) as respects any period after the 14th day of August, 1947, and before the 26th day of January, 1950, the territories for the time being comprised in the Provinces of India, but excluding the merged territory of Cooch-Bihar,

(c) as respects any period after the 25th day of January and before the 1st day of April, 1950, the territories comprised in Part A States, but excluding the merged territory of Cooch-Bihar, and the territories comprised in Part C States, but excluding the States of Manipur, Tripura and Vindhya Pradesh,

(d) as respects any period after the 31st day of March, 1950, and before the 13th day of April, 1950, the territory of India excluding the State of Jammu and Kashmir and the Patiala and East Punjab States Union; and

(e) as respects any period after the 12th day of April, 1950, the territory of India excluding the State of Jammu and Kashmir:

Provided that the taxable territory shall be deemed to include—

(a) the merged territories—

(i) as respects any period after the 31st day of

March, 1949, for any of the purposes of this Act, and

- (ii) as respects any period included in the previous year, for the purpose of making any assessment for the year ending on the 31st day of March, 1950, or for any subsequent year; and

(b) the whole of the territory of India excluding the State of Jammu and Kashmir—

- (i) as respects any period, for the purposes of sections 4 A and 4 B,
- (ii) as respects any period after the 31st day of March, 1950, for any of the purposes of this Act, and
- (iii) as respects any period included in the previous year for the purpose of making any assessment of the year ending on the 31st day of March, 1951, or for any subsequent year;

Before 15th August 1947, Indian Income-tax Act was applicable to whole of the then British India (and was not applicable to Indian States). Taxable territories then comprised British India only. On 15th August 1947, part of the country (later on known as Pakistan) was separated and the rest of the country was declared Independent Dominion of India. On 15th August 1947, therefore, the taxable territories were reduced only to parts of British India which came to Indian Dominion. During the period from 15th August 1947 to 12th April 1950 (by several stages) the income-tax Act came to be applied to whole of the Republic of India except the State of Jammu and Kashmir.

(15) *Total income* means the total amount of income, profits and gains referred to in sub-section (1) of section

4 computed in the manner laid down in this Act, and "*Total world income*" includes all income, profits and gains wherever accruing or arising except income to which, under the provisions of sub-section (3) of section 4, this Act does not apply and except any capital gain which is not includible in the total income of an assessee.

For explanation of "total income" and "total world income" refer to section 16.

(16) *Unregistered firm* means a firm which is not a registered firm.

SECTION 3

CHARGE OF INCOME-TAX

Where any Central Act enacts that the income-tax shall be charged for any year at any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually.

Income-tax Act by itself is not operative. It is made operative by the Indian Finance Act passed by the Central Legislature every year. Income tax Act deals with the basis, method and machinery of assessment while the Finance Act each year imposes the levy and determines the rates. If, somehow, in any year, the Finance Act is not passed before the commencement of the new financial year, the rates of the previous year, or those recommended in the Finance Bill, if any, pending before the Legislature, whichever of the two are more favourable to the assessee, will apply.

Section 3, provides that according to the rates fixed by the Finance Act tax shall be charged on the total income of the previous year of the assessee, who may be an individual, Hindu undivided family, company, local authority, a firm, or other association of persons.

Income-tax means tax on income as distinct from capital, although Indian Income-tax Act sometimes, under special circumstances, seeks to tax capital receipts as well. Indian income-tax Act nowhere defines 'income' (refer subsection 6C of section 2.)

There are two systems of fixing rates of income-tax 'Slab rate system' and 'Step rate system'. The present system since 1939 is the slab rate system while before 1939 the system was step rate system. According to slab rate system the total taxable income of the assessee is divided into slices or slabs and each successive slab is charged at a progressively higher rate of tax.

Following are the slab rates of income-tax laid down by the Finance Act of 1951 for assessments of 1951-52 :—

Rate of Income-tax		
	<i>Rate</i>	<i>Surcharge</i>
1. On first Rs. 1,500 of total income	nil	nil
2. On next Rs. 3,500 of total income	nine pies in the rupee	1/20th of the rates specified in the preceding column.
3. On next Rs. 5,000 of total income	one anna and nine pies in the rupee	Do
4. On next Rs. 5,000 of total income	three annas in the rupee	Do
5. On the balance of total income	four annas in the rupee	Do

*Note:—*No tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs. 7200 in the case of every Hindu undivided family and Rs. 3,600 in the case of every individual, unregistered firm and other association of persons. In the case of every company or local authority income tax is charged on whole of the total income irrespective of the amount and it is charged at the maximum rates. For further information about rates of income-tax and super-tax refer to Finance Act of 1951.

SECTION 4, 4A and 4B

CHARGEABLE INCOME

4. Application of Act.

(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which—

(a) are received or are deemed to be received in the taxable territories in such year by or on behalf of such person, or

(b) If such person is resident in the taxable territories during such year,—

(i) accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year, or

(ii) accrue or arise to him without the taxable territories during such year, or

(iii) having accrued or arisen to him without the taxable territories before the beginning of such year and after the 1st day of April, 1933, are brought into or received in the taxable territories by him during such year, or

(c) if such person is not resident in the taxable territories during such year, accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year :

Provided that there shall not be included in any assessment for the year ending on the 31st day of March,

1940, both the amount of the income, profits and gains referred to in sub-clause (ii) of clause (b) and the amount of the income, profits and gains referred to in sub-clause (iii) of clause (b) but only the greater of these two amounts :

Provided further that, in the case of a person not ordinarily resident in the taxable territories income, profits and gains which accrue or arise to him without the taxable territories shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in the taxable territories by him during such year:

Provided further that if in any year the amount of income accruing or arising without the taxable territories exceeds the amount brought into the taxable territories in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees.

Explanation 1.—Income, profits and gains accruing or arising without the taxable territories shall not be deemed to be received in or brought into the taxable territories within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance sheet prepared in the taxable territories.

Explanation 2.—Income which would be chargeable under the head 'Salaries' if payable in the taxable-territories shall be deemed to accrue or arise in the taxable territories wherever paid if it is earned in the taxable territories.

Explanation 3.—A dividend paid by an Indian Company without the taxable territories shall be deemed to be

income accruing and arising in the taxable territories to the extent to which it has been paid out of profits subjected to income-tax in the taxable territories

Explanation 4.— For the purposes of sub-clause (iii) of clause (b) of sub-section (1), income, profits, and gains accruing or arising, in any of the merged territories or any of the Part B States other than the State of Jammu and Kashmir before the beginning of a previous year and after the first day of April 1933, shall be deemed to be brought into, or received in, the taxable territories during such year if, and only if, they are brought into, or received in, any part of the taxable territories other than that merged territory or State during such year.

(2) For the purposes of sub-section (1), where a husband is not a resident in the taxable territories remittances received by his wife resident in the taxable territories out of any part of his income which is not included in his total income shall be deemed to be income accruing in the taxable territories to the wife.

(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them.

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

(ia) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

(a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(b) the work in connection with the business is mainly carried on by beneficiaries of the institution.

(ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

(iii) The income of local authorities except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area.

(iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1925 (XIX of 1925) applies, and any capital gains of the Fund arising from the sale, exchange or transfer of such securities.

(v) (*Omitted by Act VII of 1939*).

(vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(vii) Any receipts not being capital gains chargeable according to the provisions of section 12B and not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.

(viii) Agricultural income.

- (ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of section 58A.

(x) Any income received—

(a) by the rulers of an Indian State as his privy purse under article 291 of the constitution.

(b) by a Consul General, Consul, Vice-Consul or Consular Agent of a foreign State, as remuneration from such State for service in such capacity ;

(c) by a person employed by the consulate of a foreign States, not being a citizen of India as remuneration from such foreign State for service in such capacity ;

(d) by a Trade Commissioner or other official representative in the taxable territories of the Government of any part of the Common Wealth or of a foreign Government, as his official salary, if the official salary of the corresponding officials, if any, of the Central Government resident for similar purposes in the country concerned enjoy a similar exemption in that country ;

(e) by a member of the staff of a Trade Commissioner or official representative referred to in sub-clause (d), as his official salary, when such member is a subject of the country represented, and the country represented has made corresponding provisions for similar exemptions in the case of members of the staff of the corresponding officials of the Central Government.

- (xi) With effect from the 2nd day of September, 1939, the income chargeable under the head “Salaries” of a Nepalese member of the Nepalese Military Force serving with His Majesty’s Forces, or after the commencement of the

Constitution, with the Armed Forces of the Union or of any member of an Indian State Force so serving, and any other income accruing or arising without the taxable territories which is received in or brought into the taxable territories by any such member while the Force to which he belongs is serving with His Majesty's Forces or, after the commencement of the constitution, with the Armed Forces of the Union.

- (xii) Any income chargeable under the head "Income from property" in respect of a building the erection of which is begun and completed between the first day of April 1946 and the 31st day of March 1952 (both dates inclusive), for a period of two years from the date of such completion.
- (xiii) Any income of a scientific research association which is, for the time being, approved for the purposes of clause (xiii) of sub-section (2) of Section 10 where the income is applied solely to the purpose of that association and accrues or arises after the 31st day of March 1949.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility, but nothing contained in clause (i), clause (ia) or clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public.

4 A. Residence in the taxable territory.

For the purposes of this Act—

(a) any individual is resident in the taxable territories in any year if he—

- (i) is in the taxable territories in that year for a period amounting in all to one hundred and eighty-two days or more; or
- (ii) maintains or has maintained for him a dwelling place in the taxable territories for a period or periods amounting in all to one hundred and eighty-two days or more in that year; and is in the taxable territories for any time in that year; or
- (iii) having within the four years preceding that year been in the taxable territories for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in the taxable territories for any time in that year otherwise than on an occasional or casual visit; or
- (iv) is in the taxable territories for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in the taxable territories during that year is likely to remain in the taxable territories for not less than three years from the date of his arrival

(b) a Hindu undivided family, firm or other association of persons is resident in the taxable territories unless the control and management of its affairs is situated wholly without the taxable territories;

(c) a company is resident in the taxable territories in any year (a) if the control and management of its affairs is situated wholly in the taxable territories in that year, or (b) if its income arising in the taxable territories in that year exceeds its income arising without the taxable territories in that year, account not being taken in either case of income chargeable under the head "Capital gain."

4 B. Ordinary Residence

For the purposes of this Act—

(a) an individual is "not ordinarily resident" in the taxable territories in any year if he has not been resident in the taxable territories in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in the taxable territories for a period of, or for periods amounting in all to, more than two years;

(b) A Hindu undivided family is deemed to be ordinarily resident in the taxable territories if its manager is ordinarily resident in the taxable territories.

(c) a company, firm or other association of persons is ordinarily resident in the taxable territories if it is resident in the taxable territories.

Sub-section (1) of Section 4, lays down the scheme for taxing the income, profits and gains of the assessee. The tax payable is determined in respect of the current financial year but the income on which it is calculated is the income of the Previous Year. The rates at which tax is calculated are the rates laid down by the Finance Act of the current Financial Year. Income tax is charged on the assessee's total income of the previous year. For determining the tax liability the assessee's

are divided into two classes Residents and non residents. Resident assesseees are further divided into:

- (i) Resident and ordinarily resident, and
- (ii) Resident but not ordinarily resident.

That is to say assesseees can be classed as :—

- (a) Resident and Ordinarily resident,
- (b) Resident but not ordinarily resident, and
- (c) Non resident.

For the same purpose income of the assessee may be divided into following classes:

- (i) (a) income received in the taxable territories;
- (b) income deemed to be received in the taxable territories
- (ii) (a) income accruing or arising in the taxable territories.
- (b) income deemed to have accrued or arisen in the taxable territories.
- (iii) income accruing or arising outside the taxable territories.
- (iv) income which accrued or arose without the taxable territories after the 1st of April, 1933 and before the beginning of the previous year, and brought into or received in the, taxable territory in the previous year.

Determination of the residence of the assessee.

The residence of an assessee is determined according to the provisions of Section 4 A and 4 B, of the Income-tax Act.

If a person satisfies any one or more of the four conditions of Section 4A he is classed as resident but not ordinarily resident. If in addition to any one or more of the conditions of Section 4A he satisfies both the conditions of Section 4B, he is classed as resident and ordinarily resident. If he does not

satisfy any of the four conditions of Section 4A, he is classed as a Non-resident.

For the purpose of assessment of a person his residence during the previous year is taken into consideration and not his residence during the year of assessment. For the purpose of remittance of foreign income the residence of the assessee during the year of remittance is taken into account

From the above definition of resident and non resident it would be clear that the status of the assessee may change from year to year. He may be resident in one year and may become a non-resident in the next year, and may again become a resident in the following year. It may change even in the same assessment year with reference to his separate source of income because an assessee is entitled to choose different previous years in respect of separate sources of income.

Residence in the territories now in Pakistan, up to August 14, 1947, is treated as residence in the taxable territories of India in order to determine the status of those persons who emigrated to this country from Pakistan.

Incidence of Taxation

According to the provisions of Section 4 (1) the income of an assessee will be taxable as follows:—

(i) All income irrespective of the fact whether it is Indian income or foreign income, and whether the assessee is a resident or non resident, if it is received or is deemed to be received, in the taxable territories, during the previous year. In the case non-resident the receipt in the taxable territories should be receipt of income in the first stage— it should not be income received elsewhere and transmitted to the taxable territories. Again in the case of a resident (ordinary resident or not-ordinarily resident) if the receipt was out of foreign profits accrued before the previous year it should be after the 1st of April, 1933.

(ii) All income accruing or arising, or deemed to have accrued or arisen, in the taxable territory, in the previous year, whether the assessee is an ordinary resident, not ordinarily resident, or a non-resident.

(iii) All income accruing or arising outside the taxable territory (except in the State of Jammu and Kashmir) in the previous year, when the assessee is an ordinary resident. In the case of a not ordinarily resident this income is taxable only if it accrues or arises from a business controlled in or a profession set up, in India. In either case a sum of Rs. 4,500, out of the unremitted foreign income is to be deducted as tax-free allowance. Income accruing or arising in the state of Jammu and Kashmir (which is not brought into the taxable territories) will not be taxed in the year of accrual. It will, of course, be included in the total income of the assessee for determining the average rate of income-tax and super tax applicable to the rest of his income. It will be taxed if, and when, brought into the taxable territories in a later year. In the year in which it is brought and included in the total income of the assessee for the purpose of charging tax, the rate of tax at which the total income will be chargeable will be—

either (a) the one applicable to the total income minus the income brought from Jammu and Kashmir;

or (b) the rate applicable to the income brought from Jammu and Kashmir.

whichever alternative produces the greater tax.

(iv) In the case of a non-resident assessee all income accruing or arising outside the taxable territory will be free of tax.

If the above is analysed it will be noticed that the tax liability of resident assesseees will be as follows:—

I. In the case of Resident and ordinarily resident:

(a) on all income received or deemed to be received in the

taxable territories irrespective of the fact whether it accrued or arose within or without the taxable territories;

(b) on all income accruing or arising or deemed to accrue or arise in the taxable territories;

(c) on all income accruing or arising outside the taxable territories (except any income accruing or arising in the State of Jammu and Kashmir which is to be included in total income for determining the average rate of tax but is otherwise exempt) even though it is not brought into the taxable territories; and

(d) on all amounts brought into taxable territories out of untaxed income which accrued outside the taxable territories before the beginning of the previous year and after 1st April 1933.

Provided that any such income accruing in any of the merged territories or any of the Part B States (other than the State of Jammu and Kashmir) shall be deemed to be brought into the taxable territories during such year if, and only if, it is brought into any part of the taxable territories other than that merged territory or State.

II. In the case of Resident but not ordinarily resident:

(a) on all income received or deemed to be received in the taxable territories irrespective of the fact whether it accrued or arose within or without the taxable territories;

(b) on all income accruing or arising or deemed to accrue or arise in the taxable territories;

(c) on all such income accruing or arising without the taxable territories (except any income from business accruing or arising in the State of Jammu and Kashmir which is to be included in total income for determining the average rate of tax, but is otherwise exempt) as is derived from a business controlled in or a profession set up in India or as is brought into the taxable territories; and

, (d) on all amounts brought into taxable territories out of

untaxed income which accrued outside the taxable territories before the beginning of the previous year and after 1st April 1933.

Provided that any such income accruing in any of the merged territories or any of the Part B States (other than the State of Jammu and Kashmir) shall be deemed to be brought into the taxable territories during such year if, and only if, it is brought into any part of the taxable territories other than that merged territory or State.

It will be noticed that the difference lies only in (c) clause of the two classes of residents. In the case of a not ordinarily resident unremitted foreign income is taxed only if it is derived from a business controlled in or a profession set up in India, whereas in the case of an ordinary resident it is taxed from whatever source it may arise.

A statutory allowance of Rs. 4,500, is granted to all assesseees (whether ordinary resident or not ordinarily resident) from the unremitted foreign income. This amount of Rs. 4,500, should be deducted in the following order:—

- (i) From the income accruing or arising abroad (excluding income accruing or arising in the State of Jammu and Kashmir) from a business controlled in or a profession set up in India.
- (ii) From the income accruing or arising abroad (excluding income accruing or arising in the State of Jammu and Kashmir) from other sources in the case of a person who is resident and ordinarily resident.
- (iii) From the income accruing or arising in the State of Jammu and Kashmir from a business controlled in or a profession set up in India.
- (iv) From the income accruing or arising in the State of Jammu and Kashmir from other sources in the case of a person who is resident and ordinarily resident.

Illustrations

- (1) Assume the following particulars regarding the

taxable income or deductible loss of a person for the previous year ended 31st March, 1951, and then calculate his total income or total world income when he is (i) a resident and ordinarily resident, (ii) a resident but not ordinarily resident, and (iii) a non-resident.

Income arising in taxable territories—Salary Rs. 3,600, Interest on Securities Rs. 7,500, Profits from business Rs. 10,500 Dividend (gross) Rs. 500. A loss of Rs. 500 has been computed from property.

Income arising in foreign countries—Amount of foreign income actually remitted to taxable territories Rs. 9,600, unremitted income from business (controlled in India) Rs. 8,000 and unremitted income from property Rs. 1,500. A loss of Rs. 500 on account of same foreign income has also been carried forward from 1950-51 assessment year.

Solution :— Statement of Total Income.

	Resident and ordinarily resident Rs.	Resident but not ordinarily resident Rs.	Non- resident Rs.
Indian Income :—			
1. Income from Salary	3,600	3,600	3,600
2. Income from Securities	7,500	7,500	7,500
3. Income from Business	10,500	10,500	10,500
4. Income from Dividend	500	500	500
	<u>22,100</u>	<u>22,100</u>	<u>22,100</u>
Less loss on property	500	500	500
	<u>21,600</u>	<u>21,600</u>	<u>21,600</u>
Foreign Income :—			
1. Remitted Income	9,600	9,600	—
2. Unremitted Income:			
From business con-			
trolled in India	8,000	8,000	
Less loss	500	500	
	<u>7,500</u>	<u>7,500</u>	3,000*
Property Income	1,500		—
	<u>9,000</u>	<u>4,500*</u>	
Total Income	<u>35,700</u>	<u>34,200</u>	<u>21,600</u>

Notes:—1. Foreign income in case of non resident is 18,600. Therefore his total world Income=Rs. 40,200 (Rs. 21,600 plus Rs. 18,600)

2. * After deduction of the statutory allowance of Rs. 4,500.

3. According to the Finance Act of 1951 income tax from the non-resident will be charged on his total income at the maximum rate and his total world income shall not be taken into account as heretofore.

(2) The taxable income of an individual for the year ended 31st March 1951 consisted of (a) Rs. 13,500 from a profession in taxable territories, and, (b) Rs. 10,500 from property situated outside the taxable territories of which Rs. 3,000 was brought into taxable territories.

Work out the amount of income tax he would be required to pay for the financial year 1951-52 if he were (i) a non-resident (ii) a resident not ordinarily resident, and (iii) an ordinary resident.

Solution:—

	Resident and ordinarily resident	Resident but not ordinarily resident	Non resident
(a) Indian Income.	Rs.	Rs.	Rs.
Income from			
Profession	13,500	13,500	13,500
Less 1/5th earned income allowance	2,700	2,700	2,700
	<u>10,800</u>	<u>10,800</u>	<u>10,800</u>
(b) Foreign Income.			
(i) Remitted Income	3,000	3,000	—
(ii) Unremitted Income in excess of 4,500	3,000	—	—
Total	<u>16,800</u>	<u>13,800</u>	<u>10,800</u>

Tax Payable :—

	Tax.		Surcharge.	
	Rs.	as.	Rs.	as.
1. Resident and ordinarily resident	2,098	– 7	104	– 15
2. Resident but not ordinarily resident	1,423	– 7	71	– 3
3. Non Resident (at the maximum rate)	2,700	– 0	135	– 0

Note:— As per the provisions of Finance Act 1951, no distinction is made between Commonwealth non-residents and non-commonwealth non-residents.

A resident assessee (whether ordinarily resident or not ordinarily resident) is liable to be taxed on all income which had accrued or arisen to him outside the taxable territories after the 1st April 1933 and before the beginning of the previous year and brought into taxable territories during the previous year. By the amendment of the Act in 1933, it was provided that all income earned before 1st April 1933, will be exempt even if it was brought into British India afterwards and that income earned after 1st April 1933 will be taxed when brought into British India.

If an income earned after 1st April 1933 and before the beginning of the previous year at one place in a Part B state, is brought during the previous year to another place in the same part B state, it will not be liable to income tax. It will be liable to tax only if it is brought into or received in any part of the taxable territory other than that merged territory.

Illustration

Shri Raja Ram, resident of Agra (an ordinary resident of U.P.), earned an income of Rs. 9,000 from salary during the year ended 31st March 1948, from Gwalior state and invested the amount in Gwalior.

In his assessment for 1948-49, this amount was not taxed because it was not brought into taxable territories but it was

included in his total income for the purpose of determining the average rate of tax.

In February 1951, he brought it to Agra and, therefore, this amount will be included in his total income for the assessment of 1951-52. The rate at which his total income in 1951-52 will be taxed will be—

either the rate applicable to his total income minus Rs. 9,000,

or the rate applicable to an income of Rs 9,000, whichever alternative produces greater tax.

If Shri Raja Ram had transferred the amount from Gwalior to Indore, it would not have attracted tax because Indore is in the same Part B state in which Gwalior is situated.

If Raja Ram had transferred this amount to Bombay or Jaipur, it would attract tax.

A non-resident is liable to pay tax— “

(a) On all income received or deemed to be received in the taxable territories; and

(b) on all income accruing or arising or deemed to accrue or arise in the taxable territories.

A short explanation may better be given here of the following phrases which have been used in section 4 (1):—

- (i) Income, profits and gains;
- (ii) Received or deemed to be received;
- (iii) Accrue or arise or deemed to accrue or arise.

The words ‘*income*’, ‘*profits*’ and ‘*gains*’ are words of daily occurrence and the difference is more of words than of substance. Ordinarily income is used in general sense while profits and gains are used in connection with business earnings.

Received implies actual receipt while *deemed to be received* means that which law regards as received though not actually received, for example:—

(a) that amount which has not been actually received but in respect of which entries have been passed in the books of accounts kept on mercantile system of Accountancy;

(b) Provident fund contribution by the employer, or interest on the accumulated balance to the credit of an employee, in a recognised provident fund, though not actually received by the employee, is deemed to be received by him and included in his salary for the purpose of his assessment each year.

The words *accrue or arise* means more or less the same thing. They mean that the income springs up or it comes into existence or is earned. Simply accruing or arising does not mean that it has also been received or is deemed to be received.

In respect of income deemed to accrue or arise within the taxable territories Section 42 of the Indian Income-tax Act, with departmental instructions thereon, should be carefully read. Departmental instructions are given along with Section 42 in this book.

Sub-section 2 of section 4 lays down that for the purposes of sub-section (1) where a husband is not a resident in the taxable territories remittances received by his wife resident in the taxable territories out of any part of his income which is not included in his total income shall be deemed to be income accruing in the taxable territories to the wife.

Income in Jammu and Kashmir

Income in Jammu and Kashmir to a resident is exempt from tax if it is not brought into the taxable territories but it is included in his total income for the purpose of rate. In the case of an ordinary resident it is exempt from whatever source it may arise but in the case of not ordinarily resident it is exempt only if it arises from a business controlled in or a profession set up in India. The statutory allowance of Rs. 4,500 in respect of unremitted foreign income under provision 3 to Section 4 (1) is allowed from unremitted Jammu and

Kashmir income also provided the allowance has not already been absorbed in other unremitted foreign income.

This Jammu and Kashmir income when brought into taxable territories in a subsequent year will be taxed along with the other income of the assessee, if any, but since this income has already once influenced the rate of tax charged from him (in the year of the accrual of income) the rate of tax this year (the year of receipt of Jammu and Kashmir income) will be—

either the one applicable to the total income minus the remittances,

or that applicable to the amount of remittances only, whichever alternative produces the greater tax.

In the case of non-resident assesseees since the income in Jammu and Kashmir state is from outside the taxable territories it is not taken into account for the purpose of tax under this Act.

Income in Part B States

From 1st April 1950, Income-tax law has been made applicable to all Part B States also except Patiala and East Punjab States Union to which it was applied from April 13, 1950. Before 1st April 1950 Indian Income tax Act was not applicable to any of the States now comprised in Part B States.

For the purpose of income-tax Part B States may be classed under two heads :—

- (i) those which had income-tax laws of their own;
- (ii) those which had no income-tax at all.

In the case of those Part B States which had no income-tax at all, in order that all of a sudden the burden of tax may not be felt very heavy specially lower rates than the Indian rates have been prescribed for the assessments of 1950-51 and 1951-52, and it is proposed that they may be gradually enhanced so that in 5 years they may be brought at par with the Indian rates which are rather pretty high. During the same

period rates of those Part B States which had their own income-tax may also be brought in line with the Indian rates.

Rates of income-tax and super-tax for those Part B States which had no income-tax before they merged, for assessments of 1950-51 and 1951-52, prescribed the Central Government by rule made under Section 60-A of the Income-tax Act are as follows:—

Rates of Income-tax

In the case of every individual, Hindu undivided family, unregistered firm and other association of persons :—

	<i>Income</i>	<i>Rate</i>
On the first	Rs. 2,000 of total income	Nil
On the next	Rs. 3,000 of „ „	2 pies in the rupee
On the next	Rs. 5,000 of „ „	4 pies „
On the next	Rs. 5,000 of „ „	9 pies „
On the balance of total income		16 pies „

Provided that—

- (i) no tax shall be payable on a total income which does not exceed Rs. 5,000, and
- (ii) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 5,000.

In the case of every company, on the whole of the total income 16 pies in the rupee.

Rates of Super-tax :

In the case of every individual, Hindu undivided family unregistered firm and other association of persons :—

	<i>Income</i>	<i>Rate</i>
On the first	Rs. 30,000 of total income	Nil
On the next	Rs. 10,000 of total income	1 anna in the rupee
On the next	Rs. 30,000 of total income	1½ annas in the rupee
On the next	Rs. 30,000 of total income	2 annas in the rupee
On the next	Rs. 50,000 of total income	2½ annas in the rupee
On the balance of total income		3 annas in the rupee

In the case of every company—

On the whole of total income—

(a) half anna in the rupee if the total income does not exceed Rs. 25,000; and

(b) one anna in the rupee if the total income exceeds Rs. 25,000.

Provided that a rebate at the rate of 2 pies and 4 pies per rupee respectively of the total income shall be allowed in the case of every company which in respect of its profits liable to tax for the year ending 31st March 1951 and 1952 has made the prescribed arrangements for the declaration and payment in the State concerned of the dividend payable out of such profits and for the deduction of super tax from dividends in accordance with the provisions of section 18 (3D) or (3E) of the Income-tax Act, 1922,

Rates of income tax and super-tax in Part B States for the time being, therefore, shall be :—

(a) in those States which had income-tax before merger, their own rates; and

(b) in those States which had no income-tax, the above rates as prescribed by the Central Government,

A person who is resident (ordinarily resident or not ordinarily resident) in any Part A or C State and has income also in any Part B State, where rates of tax are lower than the Indian rates, is entitled to rebate of tax on his Part B State income included in his total income. The amount of rebate will be the difference of tax on Part B State income calculated—

(a) on the basis of average rate applicable to his total income calculated according to Indian rates; and

(b) on the basis of average rate applicable to his total income calculated according to that Part B State rates.

That is to say he will be required to pay tax on his total income according to Indian rates minus the rebate as worked out above. In calculating tax at Indian rates and in working out

average rates (both according to Indian rates and Part B State rates) allowance on earned income, if any, included in the total income, will be granted.

Foreign income of the residents of Part B States will also be charged at the same rate at which their income in the State itself is charged.

Exemptions:

Sub-section 3 of Section 4 :

(1) Following income is exempted from payment of both, income-tax and super-tax, and is not included in the total income even for the purpose of calculating the average rate:—

- (i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application thereto.
- (ia) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—
 - (a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or
 - (b) the work in connection with the business is mainly carried on by beneficiaries of the institution.

The word 'property' in this clause has a wider meaning. It includes securities, business or a share in business. 'Held under trust or other legal obligation' means that a legal and valid trust has been formed with some property for a religious or charitable purpose. 'Religious and charitable purpose' include relief to the poor, education, medical relief and advancement of any other object of general utility, that is such utility as is available to the general public as distinct from any particular section.

- (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

- (iii) The income of local authority except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area.
- (iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Fund Act, 1925, applies, and any capital gains of the Fund arising from the sale, exchange or transfer of such securities.

The word 'securities' here has wider meaning than what it has in section 8 of this Act.

(v) Omitted.

- (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

This provision is slightly different from the new proviso added to clause (1) of Section 7. In this case in respect of the allowance specifically granted by the employer to his employee to meet expenses wholly and necessarily in the performance of his duties of office it is immaterial for obtaining exemption of the whole amount whether the whole of it has been spent or a part only. Proviso to clause (1) of section 7 enacts that tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily, and exclusively in the performance of his duties.

- (vii) Any receipts not being capital gains chargeable according to the provisions of Section 12B and not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.

Capital Gains were made taxable by Act XXII of

1947, and remained in force for two years only—1947–1948 and 1948–49.

(viii) Agricultural income.

(ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of Section 58 A.

(x) Any income received—

(a) by the ruler of an Indian State as his privy purse under article 291 of the Constitution;

(b) by a Consul General, Consul, Vice-Consul or Consular Agent of a foreign State, as remuneration from such State for service in such capacity;

(c) by a person employed by the consulate of a foreign State, not being a citizen of India, as remuneration from such foreign State for service in such capacity;

(d) by a Trade Commissioner or other official representative in the taxable territories of the Government of any part of the Commonwealth or of a foreign Government, as his official salary, if the official salary of the corresponding officials, if any, of the Central Government resident for similar purposes in the country concerned enjoy a similar exemption in that country.

(e) by a member of the staff of a Trade Commissioner or official representative referred to in sub-clause (d), as his official salary, when such member is a subject of the country represented, and the country represented has made corresponding provisions for similar exemptions in the case of members of the staff of the corresponding officials of the Central Government.

(xi) With effect from 2nd day of September, 1939, the income chargeable under the head “Salaries” of a Nepalese member of the Nepalese Military Force serving with his Majesty’s Forces or after the commencement of the Constitution with the Armed Forces of Union or of any member of an Indian State Force so serving and any other income accruing or

arising without the taxable territories which is received in or brought into the taxable territories by any such member while the Force to which he belongs is serving with His Majesty's Forces or after the commencement of the Constitution with the Armed Forces of the Union.

- (xii) Any income chargeable under the head "Income from Property" in respect of any building the erection of which is begun and completed between the 1st day of April, 1946, and the 31st day of March, 1952 (both dates inclusive), for a period of two years from the date of such completion.

This exemption is granted in order to encourage private construction of residential buildings. In the same way concession is also granted in the form of additional depreciation allowance to encourage construction of buildings for the purposes of business, profession or vocation.

- (xiii) any income of a scientific research association which is, for the time being, approved for the purposes of clause (xiii) of sub-section (2) of section 10 where the income is applied solely to the purpose of that association and accrues or arises after the 31st day of March, 1949. —

Following are some of the further exemptions under this head that are granted by notifications of the Finance Department issued under Section 60, of the Income Tax Act :

(1) Salary or allowance paid by a State in India during the period of deputation to any person deputed by the State for training in taxable territories.

(2) Scholarships granted to meet the cost of education.

(3) Yield of Post Office Cash Certificates or National Saving Certificates.

(4) Interest on deposits in the Post Office Savings Bank.

(5) The income of a University or other educational institution existing solely for educational purposes and not for

purposes of profit.

(6) A number of allowances to different military personnel.

(7) The perquisite represented by the right of any of the officers specified in the list below to occupy free of rent as a place of residence any premises provided by the Central Government or State Government as the case may be.

List of Officers :

1. President of the Indian Union.
2. The Commander-in-Chief
3. The Governor of a State.
4. Chief Commissioner.

(8) Irrecoverable rent under the head 'property' as explained in section 9.

(9) When in any year an assessee has ceased to be an employee participating in a recognized Provident Fund and has been declared by the employer maintaining the fund not to be eligible to receive the whole of the accumulated balance due to him, so much of his income as is assessable for that year shall be exempted from income-tax and shall be excluded from the computation of his total income for the purposes of the said Act as is equivalent to so much of the accumulated balance due to him as has not been paid or is not payable to him, and if such amount exceeds the amount of his income in that year, so much of his income in the following year or years as is equal to the amount of such excess shall be so exempted and excluded in such year or years.

(2) Income included in total income but exempt from both income-tax and super-tax

1. Profits of any co-operative society other than the Sani Katta Salt-owners' Society in the Bombay Presidency or the dividends or other payments received by the members of any such society out of such profits provided the profits of a co-operative society shall not be deemed to include any income, profits or gains from—

(i) investments in securities or property as referred to in sections 8 and 9 respectively,

(ii) dividends, or

(iii) the 'other sources' referred to in section 12.

Whole of the income of co operative society doing insurance business is exempted from payment of tax.

2. According to the provisions of sub section (2) (c) of section (14) unremitted income of Jammu and Kashmir State unless it is taxable under section 42, on account of business connection with the taxable territories

(3) Income included in total income but exempt from income-tax and not from super-tax

[Ref. Sec. 16 (1) (a)]

*1. *Second Provisio to subsection 1 of Secoion 7:* Sums deducted by Government from the salary of a Government servant for securing to him a deferred annuity or for making provision for his wife or children, not exceeding one-sixth of his salary;

2. *Second and third provisos to Section 8:* Interest from tax-free Government securities;

3. *Sub section (2) of Section 14:* Share of profits from an unregistered firm or other association of persons on which tax has already been paid by the firm or the association as the case may be. If the profits of the firm or association of persons have also been subjected to super-tax, the share of profit of partner in the firm or member of the association will be exempted both from super-tax and Income-tax. (Sec. 55 second proviso).

A non-resident partner's share of profit in a registered firm which is taxed in the hands of the firm is included in the total income of the non-resident in his individual assessment but is exempted from income-tax and not super-tax.

4. *Sub-section (1) of Section 15:* Premium paid by an assessee for assessee's own life insurance or the life insurance

of assessee's wife or husband, or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee.

**5. Sub-section (2) of Section 15:* In the case of Hindu undivided family any sum paid to effect insurance on the life of any male member of the family or of the wife of any male member.

Note—Amount of insurance premium (not payment in respect of contract of deferred annuity) paid is exempted only up to 10 per cent. of the sum insured. Any amount paid in excess of it is not exempted.

**6.* Contributions made by the assessee to any Provident Fund to which the Provident Fund Act, of 1925, applies.

**7.* Contributions to recognised provident fund, both by the employer and the employee and interest on the accumulated balance to the credit of the employee, subject to certain conditions are exempted from payment of tax as per the provisions of section 58-F (1) and (2). Contributions made by an employee to an approved superannuation fund are also exempted according to provisions of section 58-R.

Note:—All the items put together out of those marked with an asterisk should not exceed one-sixth of the total income or six thousand rupees, whichever is less in the case of an individual and one-sixth of total income or twelve thousand rupees, whichever is less, in the case of a Hindu undivided family. Total income for this purpose of a member of a recognised provident fund should include his own contribution to the fund and not the employer's contribution and interest. Interest on accumulated balance of recognised provident fund included in the total income of the assessee should not exceed one-third of his salary for the year and the rate at which the interest has been earned should not be more than the prescribed rate (6 per cent. per annum for the time being). According to the Finance Act of 1951 earned income allowance has been fixed at one-fifth portion of the earned income with a maximum of Rs. 4,000.

(4) Income exempt from super-tax but not from income-tax

So much of the income of any Investment Trust Company as is derived from dividends paid by any other company which has paid or will pay Super-tax in respect of the profits out of which such dividends are paid.

For this purpose an Investment Trust Company must satisfy the following conditions:—

- (i) It is a company having for its principal business the acquisition and holding of investments in the stocks, shares, bonds, debentures or debenture stocks of other companies or in securities issued by public authorities.
- (ii) It is not a company formed for the purposes of, or engaged in, acquiring or exercising control over any other company or group of companies or enabling any other persons to acquire or exercise such control,
- (iii) It is a company deemed under clause (b) of the explanation to sub-section (1) of section 23-A of the said Act, to be a company in which public are substantially interested.

(5) Exemption of proportion of earned income

(See Section 15A)

(6) Exemption on account of donations for charitable purposes.

(See Section 15B)

(7) Exemption from tax of newly established industrial undertaking.

(See Section 15C)

SECTION 5

INCOME-TAX AUTHORITIES

(1) There shall be the following classes of income tax authorities for the purposes of this Act, namely—

- (a) The Central Board of Revenue,
- (b) Commissioners of Income-tax,
- (c) Assistant Commissioners of Income-tax who may be either appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax,
- (d) Income-tax Officers.

(2) The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment, and may appoint Commissioners of Income-tax, not more than three in all, each to discharge, without reference to area, and to the exclusion of any Commissioner appointed for any area, the functions of a Commissioner in respect of any cases or classes of cases assigned to him by the Central Board of Revenue.

(3) The Central Government may appoint as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit.

(4) Appellate Assistant Commissioner of Income-tax shall be under the direct control of the Central Board of Revenue and shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of incomes, or in respect of such areas as the Central Board of Revenue may direct, and, where such directions have assigned to two or more appellate Assistant

Commissioners of Income-tax, the same persons or classes of persons or the same incomes or classes of income or the same area in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed.

(5) Inspecting Assistant Commissioners of Income-tax and Income-tax Officers shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of such areas as the Commissioner of Income Tax may direct, and, where such directions have assigned to two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers the same persons or classes of persons or the same incomes or classes of income or the same area in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed. The Commissioner may, with the previous approval of the Central Board of Revenue, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Inspecting Assistant Commissioner and the Commissioner, respectively, and, for the purpose of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner respectively.

(6) The Central Board of Revenue may, by notification in the official Gazette, empower Commissioners of Income-tax, Appellate or Inspecting Assistant Commis-

sioner of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, or such areas as may be specified in the notification, and thereupon the functions so specified shall cease to be performed in respect of the specified classes of persons or classes of income or area by the other authorities appointed under sub-section (2) and (3).

(7) Assistant Commissioners of Income-tax and Income-Tax Officers shall, for the purposes of this Act, be subordinate to the Commissioner of Income Tax for the area in which they perform their functions, or where they perform functions assigned to them by a Commissioner of Income-tax appointed without reference to area, to that Commissioner

(7A) The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.

(8) All Officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue :

Provided that no such orders, instructions or directions shall be given so as to interfere with the direction of the Appellate Assistant Commissioner in the exercise of his appellate functions.

From the point of view of their functions, Income-tax authorities can be divided into two groups—

- (a) Administrative
- (b) Judicial.

In the Administrative Group are included :—

- (1) The Central Board of Revenue,
- (2) The Commissioners of Income-tax,—
 - (i) Provincial or Local
 - (ii) Central
- (3) The Inspecting Assistant Commissioners, and
- (4) The Income-tax Officers.

In the Judicial Group are included:—

- (1) The Income-tax Officer
- (2) The Appellate Assistant Commissioner, and
- (3) Commissioner of Income-tax.

In the first instance the Income-tax Officer exercises the judicial function. He calls for a return of income of the assessee and makes the assessment. If the assessee is dissatisfied with the judgment of the Income-tax Officer he can appeal against his order to the Appellate Assistant Commissioner. Appellate Assistant Commissioners are directly under the control of the Central Board of Revenue and their duties are purely judicial. So that they may discharge their duties fairly the following instructions have been issued by the Central Board of Revenue to the Appellate Assistant Commissioners :—

(a) that they are not to seek the advice of the Central Board of Revenue on any point arising in cases before them.

(b) that they should make their decisions to the best of their judgment; and

(c) that their promotions and prospects will not depend on whether their decisions go against the Revenue.

Under Sections 33A and 33B, the Commissioner of Income-tax, on his own initiative, may call for record of any case pending before, or decided by, any of his subordinates and decide the case or revise the order, as the case may be. Under Section 33 A the assessee can also apply to the Commissioner requesting him for the revision of an order of his subordinate.

Against the judgment of the Appellate Assistant Commissioner both the assessee as well as the Department have the

right of making a second appeal to the Appellate Tribunal formed under Section 5 A. The decisions of the Appellate Tribunal are final except that on a point of law reference may be made to the High Court, in which case the Appellate Tribunal while passing order should keep in view the judgment of the High Court. Against the judgment of the High Court an appeal lies with the Supreme Court of India provided the High Court certifies the case to be fit to be taken to the Supreme Court.

SECTION 5 A

APPELLATE TRIBUNAL

(1) The Central Government shall appoint an Appellate Tribunal consisting of as many persons as it thinks fit to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of judicial members and accountant members as hereinafter defined :

Provided that the Tribunal shall not be deemed to be invalidly constituted merely by reason of a temporary inequality caused by the death, retirement or removal of any member.

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge ; and an accountant member shall be a person who has, for a period of not less than, 6 years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditor's Certificate Rules, 1932

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint a

judicial member of the Tribunal to be president thereof

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal

(6) Save as hereinafter provided a Bench shall consist of one Judicial Member and one Accountant Member :

Provided that the President or any other member of the Tribunal specially authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Income tax Officer in the case does not exceed Rs. 15,000:

Provided further that the President may, for the disposal of any particular case, constitute a special Bench consisting either of two Judicial Members and one Accountant Member or of one Judicial Member and two Accountant Members.

(7) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the places at which the Benches shall hold their sittings.

SECTION 6

HEADS OF INCOME CHARGEABLE TO INCOME-TAX

Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely:—

- (i) Salaries.
- (ii) Interest on Securities.
- (iii) Income from property.
- (iv) Profits and gains of business, profession or vocation.
- (v) Income from other sources.
- (vi) Capital gains.

The last head of income was added in 1947 when Capital gains Tax was introduced. This tax was abolished after remaining in force for two years so that again there are only five heads under which the taxable income of an assessee is grouped. Prior to the amendment of the Act in 1939, the (iv) head of income was divided into two heads— (i) Profits of business (Section 10) and (ii) Professional earnings (Section 11). Since the method of computing profits under both the heads is the same, by the amendment of the Act in 1939 the two heads of income have been combined as in (iv) above under section 10, and section 11 of the Act has been deleted.

Income-tax is a single tax calculated on the total income of the assessee. The total income is classified under different heads because there are separate methods of calculating income under each head. More than one items of income (or loss) under one head are grouped together under that head, e g. an assessee may have several items of house property or may be interested in

several business concerns. The net income net or loss under each head is then put together and totalled—the items of losses, if any, being set off against items of income [sub-section (1) of section 24]. This forms the total income of the assessee for the purpose of his assessment.

SECTION 7

INCOME-TAX ON SALARIES

(1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits in lieu of or in addition to, any salary or wages, which are due to him, whether paid or not, or are paid by or on behalf of, the Government, a local authority, a company, or any other public body or association, or any private employer; and for the purposes of this subsection advances by way of ~~loan~~ or otherwise of income chargeable under this ~~section~~ shall be deemed to be salary due on the date when ~~the~~ advance is received :

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties :

Provided further that the tax shall not be payable in respect of any sum deducted from the salary payable by or on behalf of the Government to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or making provisions for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary :

Provided further that where tax is deducted at the source under section 18, the assessee shall not be called

upon to pay the tax himself unless he has received the salary without such deduction;

Explanation 1. The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

Explanation 2. A payment due to or received by an assessee from an employer or former employer from a provident or other fund is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purposes of this sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services.

Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Fund Act, 1925 (XIX of 1925) applies, or any payment from a recognised provident fund within the meaning of Chapter IXA if such payment is exempted from payment of income-tax under the provisions of Chapter IXA, or any payment from an approved superannuation fund within the meaning of Chapter IXB made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established.

(2) Any income which would be chargeable under this head if paid in the taxable territories shall be deemed to be so chargeable if paid in the State of Jammu and Kashmir by or on behalf of the Central Government or the Government of any State other than the State of Jammu and Kashmir.

'Wages and salary' is compensation for pain taken for, and service rendered to, another person. Though wages and salaries may be taken to mean one and the same thing, the word 'salary' is used for payment for higher type of work, whereas the word 'wages' denotes earnings of labourers and artisans only. The head 'salaries' includes in addition to salary and wages—

- (i) *annuity* which means an yearly payment of money, in the nature of income, to an employee after his retirement, either for the whole of his life or for a number of years only, in lieu of his past services
- (ii) *pension* which means monthly or other periodical payment to an employee, after his retirement, in respect of past service.
- (iii) *gratuity* which means a free gift or present or a lumpsum amount by an employer to his employee in recognition of his loyal and faithful service in the past. *Bonus* paid by an employer to an employee is taxable in the hands of an employee as gratuity.
- (iv) *fees and commission* which denotes remuneration paid by the employer for odd jobs done by the employee, e. g. commission paid to the Director of a company for guaranteeing company's overdraft with a bank, or paid to a secretary for negotiating sale of a branch of company's business. Fees and commission may sometimes be paid even gratis to an employee.
- (v) *perquisite* means any casual emoluments, fee or profit, attached to office, or position, in addition to salary or wages. Ordinarily they are of a voluntary nature (though in some cases they may be even obligatory) and are payable only during the period of service, e. g.
 - (a) income tax and super-tax paid on the salary, or insurance paid on the policy of the employee by the employer,

(b) Passage money paid by an employer to his employees for going home;

(c) House-rent allowance paid, or the value of the rent-free quarters (with a maximum of 10 per cent. of the salary) provided, by the employer to his employee. It is to be included in salary and taxed even though residence in a particular town or in a particular building may be absolutely necessary for proper performance of the employee's duty towards his employer, such as in the case of currency officer a sub-inspector of police or a warden of a hostel. It is not exempted on the ground that these employees, in any case, had to provide for their personal and their family's residence and the perquisite, therefore, is not wholly spent on the performance of his duty towards the employer. Perquisite such as free tiffin or services of personal orderlies are not taxable.

Basis of Liability :

An assessee's liability in respect of income-tax on salary arises on the basis of salaries 'which are due to him from, whether paid or not, or are paid by ..'. When salary has become due to an employee he has to be charged income tax on it irrespective of the fact whether it is actually paid to him or not. Under this principle it may be possible sometimes that income tax may be charged on salaries (on the basis of salary due) which for certain reasons may never be received by the assessee. To obviate this or another hardship which the assessee may feel when called upon to pay income tax on salary which he has not actually received, provision has been made of an administrative action by which relief may be given or collection of tax may be held over, as the case may be. In the case of all government servants, and practically all other employees, salary for a month, though it accrues on the last day of that month, it becomes due on the first day of the next month following, for example, though it accrues on the last day of the month, it salary for the month of June becomes due and payable on the 1st of July and not at the close of the 30th June, although by that date it has been earned. Salary for the

month of March becomes due on 1st April and, therefore, is included in the next year's income of the assessee.

Advance salary taken by an employee is treated in his hands as income under the head 'salaries' on the date of receipt and taxed as such. A house-building advance, of course, is a loan and not advance salary. Salary withheld under the orders of the court is taxable income.

Deduction of tax at source :

Income tax on salary is deducted at source. Under section 18 (2) any person responsible for paying any income chargeable under the head "salaries" is required, at the time of payment, to deduct income-tax and super-tax, if any, on the amount payable at the rate representing the average of the rates applicable to the estimated total income of the assessee under this head.

According to the provisions of Section 21, of the Indian Income Tax Act every employer (whether a government office, local authority, company, other public body or association or private employer) is required to prepare and deliver to the Income tax officer within 30 days from 31st day of March in each year,

- (i) a statement of the names of all those persons who received, or to whom was due, Rs. 1600 as salary during the previous year;
- (ii) The amount of salary received by or due to each such person and
- (iii) The amount deducted (at source) in respect of income-tax and super-tax from the income of each such person.

Rate of tax :

Income under the head 'salaries' is charged to income-tax at the rates of the previous year (that is the rates of the year in which salary is earned) and not at the rates of the current financial year.

Wages and salary liable to tax under this section are

those paid by Government, a local authority, a company, or other public body or association, or any private employer. Therefore, salaries or pensions paid by any other employer such as a foreign government or the State of Jammu and Kashmir, though taxable, are not charged under this section. They are charged under section 12 (income from other sources).

Accumulated balance of an unrecognised provident fund when paid to an employee is taxed to the extent to which it exceeds his own contributions and interest thereon (or in other words to the extent to which it is made up of the employer's contributions and interest thereon). A payment received by an employee from his employer or his former employer, in consideration of past services, is taxable unless the payment is solely for a breach of contract of employment on the part of the employer resulting into loss of employment to the employee.

When an assessee receives salaries in advance or he receives the amount to his credit in an unrecognised provident fund or he receives a lump sum amount as reward for past services etc. his total income for that year becomes larger than his normal income for the year, and thus becomes liable to tax at a higher average rate. Under such a circumstance the assessee can make representation to the Central Government who are empowered by section 60 of the Act to grant appropriate relief.

Fictitious salaries :

Tax is due from an employee on the real salary due to him and not on the fictitious salary, if any. In order to satisfy the conditions of employment in certain cases a contract may sometimes be made with an employee to pay him a certain salary, or a salary higher than the actual one, and at the same time another contract is entered into by which he is required to return the salary or a part of it as donation, he will either be charged no tax on salary or will be charged at a lower amount, as the case may be.

Tax-free salaries :

If according to the terms of employment an employee receives his salary free of tax, it means income-tax and super-tax, if any on his salary will be paid on his behalf by the employer. His income under the head 'salary' will, therefore, be the amount actually received by him as tax-free salary, plus the amount of income-tax paid on it by the employer, and the employee shall get credit of the amount paid as tax by the employer, in his assessment.

Tax shall not be payable by an assessee in respect of any sum which the assessee by the condition of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties. This provision is different from the exemption mentioned in sec. 4 (3) (iv) which refers to separate allowance, benefit or perquisite specially granted to meet expenses wholly and necessarily incurred. In this case the amount is included in, and forms part of, the remuneration of the employee and out of that remuneration he is required to spend. For grant of exemption under this provision two conditions are necessary—(i) by the contract of service the assessee should be required to spend, and (ii) such expenditure is required to be incurred wholly, necessarily and exclusively for the performance of his duty. Such sums as are definitely agreed to be spent by the assessee out of his salary are exempted from payment of tax irrespective of the fact whether they are actually spent or not. On the other hand if the sum is not fixed, only such amounts are deductible as are actually spent. Expenses of conveyance from his residence to office and back incurred by an employee are not allowed to be deducted because in doing so he does not do a duty in connection with the work of his office.

Any compensation received by an employee for breach of contract of employment on the part of the employer, resulting into loss of employment to the employee, is not taxable in the hands of the employee. Following are the other lumpsum

receipts which are exempted from payment of income-tax:—

(1) Accumulated balance (contributions both by the assessee and his employer and compound interest thereon) to the credit of an assessee in respect of Provident Fund which is either governed by the Provident Fund Act of 1925, or is a Recognized Provident Fund.

(2) Any sum received from an approved superannuation fund on the death of a beneficiary or in lieu of, or in commutation of, an annuity, or by way of refund of contributions on the death of a beneficiary, or on his leaving the employment in connection with which the fund is established.

(3) Any sum received in commutation of pension or as compensation for death or injury.

Earned Income Relief

All income chargeable under the head salary is 'earned income' in the hands of the assessee and, therefore, is entitled to earned income relief (Refer Section 15A). The annual accretion to the balance at the credit of an employee participating in a recognised provident fund is added to salary in order to compute the earned income allowance. Annual accretion means additions to provident fund balance during the year—the contributions both by the employer and the employee and interest on the accumulated balance.

Contributions to Provident Fund, unless it is un-recognised provident fund, is exempt from payment of income-tax in the manner explained hereafter. Life insurance premium on the life of the assessee or his wife or husband, is also exempted from payment of income-tax according to provisions of this Act. (Refer Section 15).

Provident Fund

Provident Fund means a fund created by an employer for the benefit of his employees. When an employee retires from service he is paid the amount of fund due to him and if the employee dies during the course of service the amount to

his credit in the fund is paid to his assignee or legal representative. During the period of his service the employee regularly contributes a certain proportion of his salary towards this fund and the employer also adds his share, as agreed upon by the terms of contract of service. The amount contributed both by the employer and the employee is kept in a separate account of each employee and is invested by the employer in approved securities. In the case of Recognised Provident Fund, the fund is vested in two or more trustees, or in the official trustee under an irrevocable trust. The amount to the credit of each employee goes on multiplying at compound interest and becomes available on the death or retirement of the employee.

There are three classes of Provident Funds to which an employee can subscribe :—

(1) Provident Fund governed by the Indian Provident Fund Act of 1925, which is also called Official Provident Fund or Statutory Provident Fund;

(2) Recognised Provident Fund; and

(3) Un-recognised Provident Fund.

Provident Fund under the Act of 1925

Such a fund is maintained by a Government or semi Government institution like a railway, local authority university or college.

In the case of membership of such a fund the employee's contribution only is taken into consideration and no note is taken of the employer's contribution or interest on the accumulated balance. Employee's own contribution to the fund is included in his total income under the head 'salary' and is exempted from payment of income tax (but not super-tax) up to one sixth of his salary or rupees six thousand, whichever is less. If the employee pays any life insurance premium also, (which is exempt according to the provisions of the income-tax law) both his provident fund contribution and life insurance premium put together should not exceed one-sixth of his

total income (salary plus other income, if any), or rupees six thousand, whichever is less.

When the total amount to the credit of the subscriber is paid back to him, he is not liable to pay tax on it, nor is this amount included in his total income for rate purposes. It is altogether ignored for income tax purposes.

Recognised Provident Fund :

It is the fund which is recognised by the Commissioner of Income-tax for the purposes of exemption from income tax. In order to secure recognition the provident fund rules must confirm to the conditions laid down in section 58 C of the Income tax Act and the Income-tax rules made in respect thereof. The main conditions to be complied with are : —

(1) that the fund shall be vested in two or more trustees or in the Official trustee under an irrevocable trust;

(2) that the employer shall not be entitled to recover any sum whatsoever from the fund except where the employee is dismissed for misconduct or voluntarily leaves employment without adequate reasons;

(3) that in any case such recoveries shall be limited to the contributions made by the employer himself;

(4) that the subscriptions of the employees and the contributions by the employer shall be regular and not casual;

(5) that the employer's contributions shall not exceed the employees' subscription as a rule; and

(6) that the employee shall be employed in India or the principal place of business of the employer shall be in India.

The Commissioner of Income-tax has the authority to withdraw recognition if and when, he is satisfied that the fund contravenes any of the conditions of its recognition.

Contributions to a recognised Provident Fund by the employer and the amount of interest credited to the accumulated balance of the employee are also included in his total income.

The income-tax concessions in respect of Recognised Provident Fund are:—

Contributions to a Recognised Provident Fund both by the employee and the employer taken together are exempt from income-tax (but not from super-tax) up to one-sixth of the employee's annual salary or rupees six thousand whichever is less. Salary in relation to Provident Fund means an employee's remuneration of a specific monetary amount payable periodically and does not embrace everything taxable under the head 'salaries'. If the contributions made by an employee and the employer exceed the one-sixth limit or rupees six thousand whichever is lower, the excess contributions will be liable to tax. In addition under section 15 (1) an employee can also claim rebate of income tax on life insurance premiums paid by him subject to the limit laid down in section 15 (3) that the aggregate of contributions both his own and his employer's to the Recognised Provident Fund and the insurance premium shall not exceed one sixth of his total income or rupees six thousand whichever is less. Total income for this purpose will be exclusive of the employer's contribution and the interest on the provident fund.

Interest credited on the accumulated balance of an employee is also exempt from income-tax (a) to the extent that it does not exceed one-third of his annual salary and (b) to the extent that it is allowed at a rate not exceeding the prescribed rate (6 per cent. for the time being).

Income on the investments held for the purpose of the Fund is also exempt from income-tax.

The accumulated balance due to an employee on his death, retirement or ceasing to be a member of the fund is also exempt from income tax and super tax and is not included in computation of the total income, provided the employee has rendered continuous service to the employer for not less than five years. The Commissioner of Income-tax has also power, in certain circumstances to allow the exemption even when the service rendered is less than this period.

Contributions made by an employer to the individual accounts of his employees, in a recognised fund, less recoveries, if any, under the provisions of section 58-C (1) (f) are allowed to him as an item of expenditure under section 10 (2) (xv) of the Act, as the fund is an irrevocable trust.

Membership of a recognised provident fund can be optional also and in such a case if a member decides to discontinue his membership of the fund while not resigning his employment, he is entitled to claim repayment of the accumulated balance at his credit under section 58-C (1) (g), of the Act.

Unrecognised Provident Fund :

It is the fund which is neither governed by the Indian Provident Fund Act of 1925 nor is recognised by the Commissioner of Income-tax for the purposes of exemption from tax. So far as income-tax is concerned it is a private arrangement between the employer and the employees. No note is, therefore, taken of the existence of such a provident fund by the Income-tax Department. Employee is not granted any exemption in respect of his contributions towards an unrecognised provident fund. His salary, without deductions in respect of provident fund contributions, is included in his total income. At the same time periodical contributions by an employer towards the provident fund of the employee are not taxable year after year in the hands of the employee.

When the accumulated balance to the credit of an employee, in an unrecognised provident fund, becomes due it is taxable after deducting therefrom employee's own contributions and interest thereon. That is employee's own contributions (which have already been taxed as part of his monthly salaries throughout his membership of the fund) and interest thereon are left out and the aggregate of the employer's contributions and interest thereon is included in the salary of the year of receipt and taxed along with it. -

Contributions to private provident funds by an employer are allowable as business expense if the fund is constituted as

an irrevocable trust and if no part of the employer's contribution can be recovered by him. If the fund remains in the hands, or under the control, of the employer, no contributions by him would be allowed as a deduction, but actual payments made to employees leaving the service would be allowed in the year in which such payments are made, so far as such payments relate to the employer's contributions only.

Approved Superannuation Fund:

The word 'superannuation' means to retire from service on a pension on account of oldage or infirmity. Superannuation fund therefore means the fund created for the purpose of giving pensions. Approved means approved by the Central Board of Revenue for the purpose of granting income tax concessions. In order to secure approval the fund must conform to the conditions as laid down in Section 58—P of the Income-tax Act.

The payments by an employee towards an approved Superannuation Funds are treated in the same way as payments of life insurance premiums under section 15. The relief granted is only in respect of income tax and not super-tax. The maximum amount allowable in respect of contributions to superannuation fund (together with life insurance premium; and Provident fund contributions, if any) is one-sixth of the total income of the employee or rupees six thousand, whichever is lower. Income derived from investments or deposits of an approved superannuation fund (and any capital gains arising from the sale, exchange, or transfer of capital assets of such fund) are exempt from payment of income tax. Any sums paid by an employer by way of contribution towards an approved superannuation fund is deducted in computing his income, profits and gains for the purpose of assessment.

Repayment from an approved superannuation fund to an employee himself or to a beneficiary are altogether exempt from tax in the hands of the recipient.

Illustration (1) :

Shri S. P. Verma, a lecturer in Agra College, draws a salary of Rs. 450, per month, plus Rs. 25 per month, dearness allowance. He contributes one anna per rupee of his salary towards provident fund, the college contributing a similar amount. As Warden of one of the college hostels he is provided with a rent-free-quarters of the annual value of Rs. 400. The amount of interest credited on the accumulated balance of his provident fund, during the year 1950-51, amounted to Rs. 500. He paid Rs. 1,000, as premium on his own life insurance Policy, Rs. 320 on the policy of his wife and Rs. 150, on the policy of his son. His income-tax liability for the assessment of 1951-52, will be calculated as follows :—

Salary for 12 months at Rs. 450 per month	Rs. 5,400
Dearness allowance at Rs. 25 per month	300
Annual value of rent-free quarters	400
Total income	Rs. 6,100
Less: Earned Income Allowance (one fifth of Rs. 6,100)	1,220
Taxable income	Rs. 4,880

Exempted income:

Employee's contributions to Provident Fund (included in his salary above)	Rs. 337-8
Insurance premium (balance of Rs. 1,016, the amount admissible on the basis of one sixth of total income of Rs. 6,100)	678-8
	<u>1,016-0</u>

Calculation of tax :

Tax on Rs. 4,880 (at 1950-51 rates)	Rs. 158-7
Average rate 6.23 pies	
Rebate on exempted income of Rs. 1,016, at the average rate of 6.23 pies per rupee	33-0
Tax payable.	Rs. 125-7

Note :—Provident Fund is governed by the Provident Fund Act of 1925 ✓

Illustration (2) :

Mr. X was employed in The Bharat Trading Corporation Ltd. on 1st March, 1947, on an initial salary of Rs. 360 per month, <(in the grade 300-20/2-500) plus 10 per cent. dearness allowance and rent-free quarters of the annual value of Rs. 720. He contributed one anna per rupee of his salary towards an unrecognised Provident Fund maintained by the employer and to which the employer contributed an equal amount. On 30th September, 1950, he was, however, discharged and was paid Rs. 2,500, compensation. He received Rs. 2,080, accumulated balance to the credit of his Provident Fund account. On 1st December, 1950, he was able to secure a temporary post for 6 months on a salary of Rs. 400 per month.

His total income for the assessment of 1951-52, and the earned income allowance to which he will be entitled will be as follows;—

Salary for 7 months at Rs. 380 per month	Rs. 2,660
Dearness allowance at 10 per cent. on above.	266
Value of rent-free house not exceeding 10 per cent. of salary	292
Half of the lumpsum receipt of accumulated balance of un-recognised Provident Fund representing employer's contribution and interest thereon.	1,040
Salary for 3 months at Rs. 400 per month	<u>1,200</u>
Total Income	Rs. 5,458
Earned Income Relief	Rs. 1,092

Illustration (3)

Shri R. N. Pande is employed in a Sugar Mill on a salary of Rs. 600, per month, plus Rs. 50 per month dearness allowance. One anna per rupee is deducted from his salary for securing a deferred annuity for him. He is provided with a rent-free quarters of the annual value of Rs. 600. He pays Rs. 1,200 as life insurance premium. Find out his taxable income from salary and the exempted portion of it.

Solution

<i>Income from salary :—</i>	Rs.
Salary (Rs. 600 + 50) × 12	7,800 ¹²
Annual value of rent free quarters	600
	<hr/>
Total	Rs. 8,400 [✓]
Less Earned Income Relief	1,680
	<hr/>
Taxable income	Rs. 6,720
	<hr/>
unadjusted <i>Income :—</i>	
Deductions in respect of deferred annuity	450
Life insurance premium	950
	<hr/>
	Rs. 1,400
	<hr/>

Note—Maximum amount permissible in respect of deferred annuity payments and insurance premium is Rs. 1,400, one-sixth of total income of Rs. 8,400.

Illustration: (4)

Shri Hari Har Nath is an employee in a firm. His salary throughout the previous year ended 31st March, 1951, was Rs. 600, per month and he was allowed Rs. 80 per month as house-rent allowance. On 15th March, 1951, he received Rs. 15,000, as commission from his employers.

Prepare his assessment for the year 1951-52, and calculate the amount of tax due from him.

		<i>Tax deducted at source.</i>
Solution	Rs.	Rs. as.
Salary for 12 months	7,200	331-8
House rent allowance	960]	
Commission	15,000	
	<hr/>	<hr/>
Total income	23,160	331-8
Less Earned Income Allowance, maximum amount permissible	4,000	
	<hr/>	
Taxable income Rs.	19,160	
	<hr/>	

<i>Total tax payable on Rs. 19,160:—</i>	Rs	as.
On first Rs. 1,500		nil
On next Rs. 3,500 @ 9 pies per rupee	164-	1
On next Rs. 5,000 @ -/1/9 pies	546-	14
On next Rs. 5,000 @ 3 annas	937-	8
On balance of Rs. 4,160 @ 4 annas	1,040-	0
Total	Rs.	2,688- 7

Note—Income-tax on salaries is charged at the rates of the previous year and not at the rates of the Assessment year. Therefore, the surcharge over the rates of the last year, levied by the Finance Act of the current year, will not be imposed

Total tax due	Rs.	2,688-7
Less tax deducted at source		331-8
Tax payable	Rs.	<u>2,356-15</u>

Calculation of tax deducted at source:

Salary	Rs. 7,200 -
House rent allowance	960
Total	8,160
Less Earned income relief	<u>1,632</u>

Taxable income from salary 6,528 and tax thereon

Rs. 331-3.

Therefore monthly deduction of tax from salary Rs. $331-3 \div 12$
= Rs. 27-10 annas.

Total deductions during the year = Rs. $27-10\text{as.} \times 12$
= Rs. 331-8 as.

Commission was paid on 15th of March and therefore tax could not be deducted on it along with tax on salary. The employer could, of course, deduct Rs. 2,356-15 as. (in addition to monthly deductions) when he paid Rs. 15,000 in respect of commission on 15th March, 1951.

Illustration (5)

During the year ended on 31st March, 1951, Shri R. N. Mukerjee was employed in Northern India Medical Stores, New

Delhi, on a monthly salary of Rs. 750, and commission at 5 per cent. on net profits after charging such commission. In addition he was paid Rs. 150 per month as car allowance which he was required to keep by terms of his contract of service to enable him to do travelling for the business of his employers. He was provided with a rent-free furnished bungalow of the annual value of Rs. 1,800. As he is an ex-medical officer of the former Jaipur State he gets a pension of Rs. 300 per month. The net profit of the firm (before charging commission payable to Shri R. N. Mukerjee) for the firm's accounting year ended on 31st December, 1950, was Rs. 2,10,000.

In respect of assessment of Shri R. N. Mukerjee for 1951-52, what will be his total income and the earned income relief to which he will be entitled ?

Solution

12 months' salary at Rs. 750 per month	9,000
Commission—105 : 5 :: 2,10,000	16,000
Rent-free bungalow	1,800
Pension from former Jaipur State service	3,600
Total Income	Rs. 24,400
Earned Income Allowance, on the basis	
of 1/5th of total income with a	
maximum of Rs. 4000	4,000
Taxable Income	Rs. 20,400

Note —Motor-car allowance of Rs. 150 per month will not be included in salary because it is given specifically to be spent for the work of the employer.

Illustration (6)

The following are the particulars about the income of Mr. X of Allahabad University:—

(a) He was employed on 1st July, 1949, in the grade Rs. 500—30—800, plus dearness allowance at 10% of the salary.

(b) He contributes 3% of the salary towards his Provident Fund, while the University contributes 12%.

(c) As Proctor of the University he received—

(i) an allowance of Rs. 100 per month;

(ii) a rent-free bungalow of the annual municipal valuation of Rs. 540; ;

X (iii) an orderly who is paid Rs. 55 per month by the University.

X (iv) a motor-car allowance of Rs. 45 per month.

(d) His income from examinership amounted to Rs. 1,150, and from Royalty to Rs. 750.

(e) He holds 50 shares of Rs. 100 each, in the Upper India Trading Company Limited, on which he received a dividend of 12% less tax.

(f) He received a prize of Rs. 350 in a 'Commonsense Crossword' Competition.

He paid Rs. 1,526, as premium on his life insurance policy.

You are required to prepare his assessment for the year 1951-52. Actual amount of tax payable by him need not be calculated.

Solution

Assessment of Mr. X for 1951-52

	Rs.	Rs.
X Salary for 12 months	6,240*	
Add: (a) Dearness Allowance	624	
(b) Proctorship Allowance	1,200	
(c) Rent-free bungalow	540	8,604
<hr/>		
Income from other sources:—		
(a) Examinership	1,150	
(b) Royalty	750	
(c) Dividend on shares	600	2,500
<hr/>		
Total Income		Rs. 11,104
Less Earned Income Relief—1/5th of earned income of Rs. 10,504		Rs. 2,101
<hr/>		
Taxable Income		Rs. 9,003
<hr/>		

Exempted Income:—

(a) Provident Fund contribution of Mr. X	499
(b) Insurance premium	1,352
(1/6th of total income of Rs. 11,104)	<u>1,851</u>
* for four months at Rs. 500 per month	Rs. 2,000
for eight months Rs. 530 per month	Rs. <u>4,240</u>
	<u>Bs. 6,240</u>

Illustration 7.

Shri R. Mullick is an employee in a firm drawing a salary of Rs. 600 per month. He is contributing 5 per cent. of his salary towards provident fund to which his employer adds an equal amount. He is paid two months' salary as bonus. The amount of interest credited to his provident fund (at 3 per cent. per annum) amounted to Rs. 600. He paid Rs. 750 as life insurance premium.

Determine his Income-tax liability:—

- (i) When the fund is recognised, and
- (ii) When the fund is unrecognised.

Solution

(i) When the fund is recognised:	Rs.
Salary	7,200
Bonus equal to 2 months salary	1,200
Employer's contribution to P. F.	360
Interest on Provident Fund	600
Total	<u>Rs. 9,360</u>
Less Earned income allowance 1/5th of Rs. 9360	<u>1,872</u>
Taxable Income	<u><u>7,488</u></u>

Exempted Income :

Provident Fund contribution both of employer and the employee	Rs. 720
Insurance Premium	680
Interest on Provident Fund	600
	<u>Rs. 2,000</u>

*Note:—*Provident fund contributions both of the employer and the employee and life insurance premium should not exceed one-sixth of total income. Total income for this purpose should not include employer's contribution and interest on accumulated balance.

Tax on Rs. 7,488	Rs. 436-3
average rate of tax 11. 18 pies	
Less rebate on exempted income of Rs. 2,000 @ 11.18 pies	<u>116-7</u>
Tax payable	Rs. 319-12

(ii) When the fund is unrecognised :—

Salary	Rs. 7,200
Bonus	<u>1,200</u>
Total	Rs. 8,400
Less Earned Income Relief	<u>1,680</u>
Taxable Income	<u>Rs. 6,720</u>

Exempted Income

Life insurance premium	Rs. 750
Income-tax on Rs. 6,720	Rs. 352-3 as.
Average rate 10.06 pies per rupee	
Rebate on Exempted income of Rs. 750 at the average rate of 10.06 pies per rupee	Rs. 39-5 as.
Tax payable	<u>Rs. 312-14 as.</u>

Illustration (8)

Following are the particulars of income of Shri O. P. Sharma for the previous year ended 31st March, 1951 :—

(a) Salary—Rs. 300 per month.

(b) He contributes one anna per rupee of his salary

towards provident fund and his employer contributes an equal amount.

(c) He is provided a rent-free quarters of the annual value of Rs. 400.

(d) Interest credited to his provident fund account during the year was Rs. 620.

(e) He paid Rs. 450 insurance premium on his own life policy.

You are required to find out for his assessment for the year 1951-52, his total income and exempted income,

- (i) when the provident fund is recognized,
- (ii) when Provident Fund Act of 1925 applies to it; and
- (iii) when the provident fund is unrecognized.

Solution

(i) *When the provident fund is recognized:—*

Salary for 12 months at Rs. 300 per month	Rs. 3,600
Value of rent-free quarters (Rs. 400) with a maximum of 10 per cent. of salary	360
Contribution to provident fund by the employer	225
Interest on accumulated balance of P. Fund	620
Total Income	Rs. <u>4,805</u>

Exempted Income:—

Provident Fund Contributions—

of the employer	Rs. 225
of the employee	<u>Rs. 225</u>
(they are less than 1/6th of annual salary)	450

Insurance premium—

Maximum relief in respect of provident fund contributions and insurance premium should not exceed 1/5th of the total income or Rs. 6,000, whichever is less—

1/6th of Rs. 3,960*—	Rs. 660	
less relief allowed in respect of provident fund	<u>450</u>	210
Carried forward		<u>660</u>

Brought forward	660
Interest on accumulated balance of provident fund being less than one- third of the annual salary and presuming the rate of interest to be not more than 6 per cent.	620
Total	Rs. 1,280

* Total income for this purpose to be taken exclusive of the employer's contribution to provident fund and interest on accumulated balance of provident fund

(ii) *When Act of 1925 applies to the Provident Fund. —*

Salary for 12 months at Rs. 300 per month	Rs. 3,600
Value of rent-free quarters	360
Total Income	3,960

Exempted income—

Provident fund contribution of the employee	225
Insurance premium	435
Total	660*

* Employee's contribution to the Provident fund and the life insurance premium paid by the assessee should not exceed one sixth of the total income viz. Rs. 660, or Rs. 6,000 whichever is less.

(iii) <i>When the Provident Fund is unrecognised</i>	Rs.
Salary for 12 months at Rs. 300 per month	3,600
Value of rent-free quarters	360
Total Income	Rs. 3,960

Exempted Income—

Life insurance premium	Rs. 450
------------------------	---------

SECTION 8

INCOME-TAX ON INTEREST ON SECURITIES

The tax shall be payable by an assessee under the head "interest on securities" in respect of the interest receivable by him on any security of the Central Government or of a State Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company :

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realising such interest on behalf of the assessee or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without the taxable territories, not being interest on a loan issued for public subscription before the 1st day of April, 1938, unless in respect of interest which is so chargeable tax has been paid or deducted under section 18, or unless there is a person in the taxable territories who may be appointed an agent under Section 43 in respect of such interest :

Provided further that no income-tax shall be payable on the interest receivable on any security of the Central Government issued or declared to be income-tax free :

Provided further that the income-tax payable on the interest receivable on any security of a State Government issued income-tax free shall be payable by the State Government.

Securities dealt with in this section are :—

- (i) Securities of the Central Government and the State Governments.
- (ii) Securities or debentures for money issued by or on behalf of a local authority.
- (iii) Debentures of joint stock companies.

Securities or debentures issued by firms, clubs or associations etc. do not come under this section; nor do any stocks, shares or securities or loan bonds issued by a foreign government or a foreign company. Dividend on shares of joint stock companies or interest on fixed deposit account with bank is taxed as 'income from other sources'—(Sec. 12).

Securities of the Central Government or of State Governments may be free of income tax. In such a case holder of the securities will get full rate of interest on his total holding. In the case of the former interest is exempt from income-tax but in the latter case income-tax is paid by the State Government concerned. The assessee pays no income-tax on the tax-free securities but he shall be required to pay super-tax, because the exemption applies only to income tax. Income-tax on tax-free interest is not charged from the assessee but it has to be included in his total income to determine the average rate of tax for his assessment.

When tax-free debentures are issued by companies the income from such debentures is not actually free from tax, because the company issuing such debentures pays tax on behalf of the debenture-holder. The amount of interest received by the debenture-holder is grossed up and included in his total income and credit is given to him of the amount paid by the company as income tax in respect of his share of interest.

Interest on securities is taken into account for the purpose of assessment of income-tax when it is actually received, but if the assessee keeps his accounts on mercantile system of accountancy it may be taxed on accrual basis.

The following deductions are allowed in computing taxable income under this head :—

- (i) *Commission charged by the bank for collecting interest.*
It is allowed only when the banker specifically deducts his commission out of the interest realized. Commission charged by the bank for purchasing and selling the securities is not allowed as a permissible deduction, unless the assessee is a dealer in securities. The profit or loss on the purchase and sale of the securities will also be treated on the same basis.
- (ii) *Interest on money borrowed by the assessee for the purpose of investment in securities.* But if the interest is payable outside the taxable territories (not being interest on loan issued for public subscription before the 1st day of April, 1938) then no deduction can be claimed unless tax has been previously recovered thereon by deduction at source or there is a person in the taxable territories who can be charged to tax in respect of that interest.

Interest payable by a customer on an overdraft, supported by deposit of securities with the bank, is not allowed to be deducted from interest on such securities. Interest on money borrowed for purchasing tax-free securities should be deducted from interest on such tax-free securities. When a bank, or other concern engaged in business similar to that of a bank, receives deposits on account of loans in the course of its business and invests the money so borrowed as occasion arises, the entire interest on such borrowings (deposits) will be allowed as deduction against its entire income liable to tax without attempting at allocation of the borrowed money to investments in tax-free and other securities.

Income from interest on securities is assessed on the basis of actual receipt. Interest on securities is taken to be the income of the person who is the owner of the securities on the

date the interest falls due, irrespective of any adjustments that might have been made between the buyer and the seller (cum-div. or ex-div.) with regard to interest at the time of purchase or sale of security.

Some times on account of payment of interest at higher rate on the money borrowed for the purchase of securities, or for any other similar reason, there may be loss from securities instead of income, this loss can be set off against income of the assessee under other heads.

According to the provisions of section 18-3 income tax (but not super-tax) is deducted at maximum rate from the interest on securities by the person responsible for such payment. But if the owner of the securities applies to the Income-tax Officer stating that his total income is less than the minimum chargeable to income tax, or is liable only to a lower rate, and the Income tax officer is satisfied in this respect to the best of his belief, he may give a certificate to the applicant stating that no income-tax be deducted from the interest to be paid to him or that it be deducted at a lower rate.

The person deducting income-tax from interest on securities must give a certificate to each person from whose interest income-tax has been deducted stating the amount of tax deducted. He should also send a statement containing this information to the Income tax Officer.

Rate of Tax

Income under the head 'interest on securities' is charged to income-tax at the rates of the previous year, that is, the rates of the year in which the income is received and not at the rates of the assessment year. ✓

Illustration (1) ✱

Following were the investments of Shri Daulat Ram during the year ended 31st March 1951. You are required to calculate his 'income from securities' for the assessment of 1951-52;—

Investments on 1st April 1950—

- (i) Rs. 60,000, in 4% U. P. Government Loan; —
- (ii) Rs. 35,000, in 5% Calcutta Improvement Trust Debentures.
- (iii) Rs. 15,000, in 6% Preference Shares of a Cotton Mill Company.
- (iv) Rs. 20,000, in 5% free of tax Government loan.
- (v) Rs. 40,000, in 6% Debentures of the Imperial Trading Company.

On 1st September 1950, Shri Daulat Ram sold the above Rs. 40,000, 6% debentures of the Imperial Trading Company and purchased Rs. 70,000, 6½% debentures of the Eastern Bengal Jute Company Ltd. The additional sum of Rs. 30,000, needed for the purpose was borrowed from bank at 7½% per annum interest. The Bankers of Shri Daulat Ram charged commission on selling and buying of the investments at the rate of one anna per cent. Charges for collecting interest on tax-free Govt. loan came to Rs. 4. and on other securities to Rs. 19. Interest or dividend, on investments, in each case, is payable half-yearly on 1st July and 1st January.

Solution

Income from securities

for the assesment of 1951-52.

		Rs.
(i)	Interest on U. P. Government Loan	2,400
(ii)	Interest on Calcutta Improvement Trust Debentures	1,500
(iii)	Interest on Tax free Government Loan Rs.1,000	
	Less collection charges Rs. 4	99 6
(iv)	Half year's interest on debentures of Imperial Trading Company	1,200
(v)	Half year's interest on debentures of Eastern Bengal Jute Coy. Rs. 2,275	
	Less interest on bank loan	
	of Rs. 30,000, for 7 months	
	at 7½ per cent.	Rs. 1,312-8
		962-8
	Total	Rs. 7,058-8

Less Bank collection charges 19 0

Total income from securities Rs. 7,039 8

Exempted Income (Int. on Tax-free securities) 996

Notes:—(1) Dividend on 6 per cent. preference shares is not taxable under the head 'income from securities'. It is taxable under section 12 (income from other sources)

(2) Bank Commission for selling and buying of the investments is treated as capital expenditure and hence not deductible from taxable income.

Illustration (2)

Following is the statement of investments of Shri Dina Nath for the year ending 31st March, 1951:—

Description	Amount Rs.	Rate Int	Date of Int.	Remarks
1. U. P. Govt. 1960-65 loan	10,000	3½%	1st Sep. 1st Mar.	
2. Bombay Port Trust Debentures	30,000	4½%	1, June. 1, Dec.	Rs. 15,000 sold on 1-10-51 at Rs. 99 cum-div.
3. Central Govt. Loan	20,000	3%	1, Sep. 1, Mar.	Free of tax
4. Kanpur Improvement Trust Loan	15,000	4½%	1, June. 1, Dec.	
5. Central Govt. Loan	40,000	4%	1, Sep. 1, Mar.	Bought on 15th Oct. 1950.
7. Rani Jute Mills Coy. Pref. Shares	15,000	6½%		Div. received on 15-3 1951.

Note:—(1) For purchasing tax-free loan of Central Government, a loan of Rs. 15,000, at 5 per cent. per annum was taken on 1-10-1949 from bank which was repaid on 30th Sept. 1950.

(2) For purchasing 4 per cent. Central Government loan of Rs. 40,000, on 15th October, a bank overdraft of Rs. 24,000, was secured at 4½ per cent. per annum interest.

(3) Bank charged 8 annas per cent. commission for collecting interest and 4 annas per cent. on buying and selling securities.

You are required to calculate his income from investments and find out the amount of tax payable or refundable, assuming that the assessee has no other source of income.

Solution

(a) *Income from taxable securities:— Amount Tax deducted at source.*

	Rs.	as.	Rs.	as.
(i) U. P. Government loan	350	0	87	8
(ii) Bombay Port Trust Debs.	1,912	8	253	2
(iii) $4\frac{1}{2}\%$ Kanpur I. T. Debentures	675	0	168	12
(iv) $4\frac{1}{2}\%$ Central Govt. Loan	800	0	200	0
Total	Rs. 2,837	8	709	0

Less permissible expenses:

(i) Int. on Rs. 24,000

for $5\frac{1}{2}$ months Rs. 495-0

(ii) Bank commission for

collecting int.

~~15-8~~ 510-8
Rs. 2,327-0

(b) *Income from tax free securities : -*

Interest on 3 per cent. Central

Government loan

Rs. 600-0

Less Admissible expenses :--

(i) Int. on loan Rs. 375

(ii) Bank commission 3

378-0

Rs. 222-0

(c) *Income from other sources:—*

$6\frac{1}{2}\%$ dividend on pref. shares of

Rs. 15,000

Rs. 975

Tax deducted at source.

Less Bank commission Rs. 5

970-0

243-12

Statement of total income	Tax deducted at source	
	Amount	
	Rs. as.	Rs. as.
1. Income from taxable securities	2,327-0	709 6
2. Income from tax-free securities	222-0	
3. Income from other sources	970-0	243 12
	<hr/>	<hr/>
	Rs. 3,519-0	953-2

Exempted Income

Income from tax free securities included in the total income Rs. 222.

Note—Since his income from investments is below taxable limit and he has no other income, no tax is due from him on his total income, and, therefore, Rs. 953-2 annas deducted at source is refundable to him.

Notes—(1) Tax on securities is charged from the person who owns them on the date of interest irrespective of the fact whether he held them for full term of interest or for part only, and also irrespective of the fact whether he purchased them cum-div. or ex-div.

(2) Bank charged as commission 8 annas on full one hundred rupees of interest or part thereof. Commission charged by the Bank on buying and selling of securities on behalf of the assessee is not allowed, it being considered as capital expense.

(3) Bank commission for collecting interest on tax-free securities and interest on loan for purchasing them is charged against tax-free interest.

Note—Income from securities and dividends on shares is taxed at the rates of previous year (the year in which such income is earned) and not according to the rates of the current financial year. It may be noted that income from salaries is also taxed in the same way.

Illustration (3)

In the last illustration supposing in addition to income from investments the assessee had a net income of Rs. 5,279, from property.

<i>His assessment will be as follows :—</i>	Rs.
1. Income from Securities	2,509
2. Income from Property	5,279

3. Income from Dividends

(other sources)	970
-----------------	-----

Total Income	8,798
--------------	-------

Exempted Income	222
-----------------	-----

Tax will be calculated as follows :—

- (i) On Rs. 5,279 at current rates (1951 Finance Act)
- (ii) On Rs. 3,519 at last year's rates (1950 Finance Act) and rebate on Rs. 222 will be allowed according to average rate of tax worked out on Total Income of Rs. 8,798.

It will be worked out as follows :—

- (i) Tax on Rs. 8,798 at 1951 rates:

	<i>Tax</i> Rs.	<i>Sur-charge</i> Rs.
On Rs. 1,500	Nil	—
On Rs. 3,500 at 9 pies	164-1	8- 3-3
On Rs. 3,798 at 11/9 pies	415-7	20-12-4
	<hr/> 579-8	<hr/> 28-15-7
Surcharge	29-0	
Total Tax	<hr/> 608-8	

Proportionate tax on Rs. 5,279 (Income from Property)
Rs. 365-2

- (ii) Tax on Rs. 8,798 at 1950 rates Rs. 579-8,
Proportionate tax on Rs. 3,519 231-13
(Income from Securities and dividends)

- (iii) Tax on total Income of 8,798 596-15
Average rate of tax 13.03 pies per rupee.

- (iv) Less Rebate on Rs. 222 at the average
rate of 13.03 pies per rupee ~~29~~17-9
Tax due 579-6
Tax deducted at source 953-2
Therefore tax refundable to the assessee Rs. 373-12

SECTION 9

INCOME-TAX ON INCOME FROM PROPERTY

(1) The tax shall ~~be~~ be payable by an assessee under the head "Income from Property" in respect of the bona fide annual value of property consisting of any buildings or land appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of any business, profession or vocation carried on by him the profits of which are assessable to tax, subject to the following allowances, namely :—

- (i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;
- (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value ;
- (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction;
- (iv) where the property is subject to a mortgage or other capital charge ; the amount of any interest on such mortgage or charge ; where the property is subject to an annual charge not being a capital charge, the amount of

such charge ; where the property is subject to a ground rent, the amount of such ground rent ; and, where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital :

Provided that no allowance shall be made in respect of any interest or annual charge payable without the taxable territories and chargeable under this Act, not being interest on a loan issued for public subscription before the first day of April, 1938, except interest or a charge on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent for the payee in the taxable territories who may be assessed under section 43 ;

- (v) any sums paid on account of land revenue in respect of the property ;
- (vi) in respect of collection charges, a sum not exceeding the prescribed maximum ;
- (vii) in respect of vacancies, that part of the annual value which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part which is proportional to the period during which such part is wholly unoccupied.

Explanation —For the purposes of clause (iv) of this subsection, the expression “annual charge” does not include any tax in respect of property or income from property levied by a local authority or a State Government or the Central Government.

(2) For the purposes of this section, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year :

Provided that where the property is in the occupation of the owner for the purposes of his own residence and aforesaid sum exceeds ten per cent. of the total income of the owner, the annual value of the property shall be deemed to be ten per cent. of such total income :

Provided further that where the property is in the occupation of a tenant and the tax levied by any local authority in respect of the property are, under the law authorising such levy, payable wholly by the owner or partly by the owner and partly by the tenant—

(a) one-half of the total amount of such taxes or one-eighth of the annual value of the property, whichever is less, shall, notwithstanding anything contained in such law, be deemed to be the tenant's liability for such tax, and

(b) in determining the annual value of the property with reference to the rent payable by the tenant, a deduction shall be made equal to that part, if any, of the tenant's liability which is borne by the owner.

(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.

(4) For the purposes of this section the holder of

an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate.

Explanation to sub-section (1) has been added by the Indian Income tax (Amendment) Act 1950: No. LXXI of 1950. By the same Act the old sub-section (2) has been substituted by the above one. The necessity for the amendment of the Act arose on account of the judgment of the Supreme Court in two cases that went before it in which the assessee contended, and the Supreme Court upheld, that Municipal and other property taxes should be allowable deductions under clause (iv) of sub-section (1) as 'annual charge not being a capital charge.' By amending the Act the Legislature made it clear that the intention of the clause was not to allow it.

By the amendment Act it was also provided that in the two cases in which the Supreme Court gave judgment, municipal and other property taxes be allowed as a permissible deduction but that they should not be allowed in any other cases. It further laid down that if in any assessments made between 26th May 1948 and 7th October, 1950, an Income-tax authority or the Appellate Tribunal has allowed Municipal taxes etc. as admissible deductions those assessments should be revised by the Income-tax officer and if as a result of revision any tax is found payable by an assessee the same should be recovered from him.

Side by side with this, sub-section (2) has been altered so that in cases where the property is in the occupation of a tenant and the tax is payable wholly by the owner or partly by the owner and partly by the tenant, one half of the total amount of such taxes or one-eighth of the annual value of the property, whichever is less, is deemed to be paid on behalf of the tenant as his liability. This amendment shall apply to all assessments for the year ending on 31st March, 1952, and for any subsequent year.

(i) Property means landed property—buildings or lands

appurtenant thereto. Open lands not belonging, or not attached, to buildings do not come under this section. Income from vacant lands in urban areas let out for storing fodder, fuel or other materials is assessed under Sec. 12. Income of ordinary residents from foreign house property is taxable according to the provisions of this section.

- (ii) The assessee should be the owner of the property. He should have been owner in the previous year, it being immaterial if he has ceased to be so during the assessment year. If the property belongs to some other person and the assessee is its lessee and gets income by sub-letting it, his income from sub-letting will not be taxed under this section. If a person took lease of land and erected structure on it he is assessed as owner of the property. When property is let according to a hire-purchase scheme the landlord continues to be the owner of the property and taxed as such.
- (iii) Tax is not charged in respect of such portions of the property as the owner may occupy for the purposes of any business, profession or vocation carried on by him, the profits of which are assessable to tax, because when assessing the income from business no allowance is admissible in respect of the rent of the premises belonging to the owner of the business. If annual value of such buildings was to be included in 'income from property' it would have to be deducted from 'profits from business' and the result would have been the same. Income from property belonging to a person and used for his business, profession or vocation, the profits of which are not taxable will, therefore, not be exempted.
- (iv) Bona fide Annual Value (Annual Rental Value)

means the amount for which the property might reasonably be expected to let from year to year. It may be that on account of certain circumstances the actual rent paid by the tenant is more, or less, than the rent for which it can reasonably be let, in such a case it is entirely in the discretion of the Income-tax Officer to determine the annual value of the property. He may accept the rental value of a property as fixed by local authorities for rating purposes. In case of property which is let the usual practice for him is to take actual rent receivable, or the rental value as fixed by a local authority, if any, whichever is greater, as gross annual value of the property. If the premises are let furnished the rent attributable to furniture must be separated from the annual value of the premises and taxed separately. In the same way when premises are let along with plant and machinery fitted in them, such portion of the rent as is attributable to the letting of plant and machinery should be separated from the rent of the premises.

It is obligatory on the part of the owner to keep the property let on hire in a perfectly habitable condition and, therefore, he has to incur certain expenses on its repairs. Sometimes there may be an agreement between the owner and the tenant that the latter would meet the expenses of repair. The real income to the owner from rent, in such a case would be the amount received as rent plus the cost of repairs incurred by the tenant.

If any building or portion of a building is occupied by the owner for his residence, the income from property in respect of such building would be either its annual value or 10 per cent. of his total income (including income from property used for residence) whichever is less. This provision of 10 per cent. maximum, of the total income, is made with a view to relieve

hard cases of those persons who have inherited big dwelling houses from their ancestors but whose income is small.

Income from house property is assessed under this section irrespective of the fact whether it belongs to an individual, a firm or a company. It is charged under property, and not under business, (Sec. 10) even though the object of the company is to acquire and let out buildings on rent, and the profit is earned by highly organized commercial operations. Where property is owned by two or more persons jointly and their respective shares are definite and ascertainable, such persons shall not, in respect of such property, be assessed as an association of persons, but the share of each such person in the income from the property, as computed in accordance with this section, shall be included in his total income. According to sub-section (4) of this section the holder of an impartible estate is deemed to be the individual owner of all the properties comprised in the estate. Therefore income from such an estate will be included in his total income even though he is not the legal owner of the estate.

Income-tax is charged on the net amount of income from property, which means the bona fide annual value minus deductions therefrom, permitted under the Act. The following is the list of such deductions :—

1. *Repairs* - One-sixth of the gross annual value of the property is allowed in respect of repairs, whether the property is let or is in the occupation of the owner, irrespective of the fact whether such an amount has actually been spent on repairs or not. When the property is let and the tenant has undertaken to bear the cost of repairs also, the difference between the annual value and the rent paid by him up to, but not exceeding, one-sixth of such value, is allowed. This should be allowed in full without taking into account allowance for vacancy, if any, granted in respect of the period for which the property remained unoccupied.

2. *Insurance premium*—if any, paid to insure the property

against risk of damage or destruction. Premium on insurance against loss of rent can be allowed according to the departmental instructions only if the owner agrees to pay tax on any amount recovered from the insurance company under this policy.

3. ~~Interest~~ and other annual charges on the property, if any, as under—

(a) Amount of interest on loan on the mortgage of property, irrespective of the object for which loan is taken.

(b) Interest on the money borrowed for purchase, construction, repair, renewal or reconstruction of property irrespective of the fact whether the property is mortgaged or not against such a loan.

(c) Any ground rent which is chargeable in respect of the property.

(d) Any annual charge on the property which is not of a capital nature, that is which is not in discharge of a capital liability or repayment of loans borrowed. Municipal or local rates or taxes on property are not allowed as permissible deductions, except as provided by the newly changed Sub-section (2) of this section.

According to the newly changed sub-section. (2), however, from the assessment year 1951-52, provision has been made for grant of relief in respect of taxes levied by a local authority on property let out to tenants. The relief is granted irrespective of the fact whether the tax is payable by the owner of the property or partly by the owner and partly by the tenant. The amount allowed to be deducted is one-half of the tax payable with a maximum of one-eighth of the annual value as arrived at after deducting the allowance. The following illustrations will explain how the amount allowed to be deducted is arrived at :

Illustrations:

(1) Rent payable by the tenant is Rs. 6,000 per annum. The total amount of local taxes payable in respect of the property is Rs. 600, of which Rs. 200 is paid by the tenant direct

to the local authority, in addition to the rent of Rs. 6,000 paid to the owner.

Solution

Half the total amount of taxes, i. e. Rs. 300, is the tenants liability, of which Rs. 200 is paid by himself and Rs. 100 by the owner. The annual value of property for the purpose of income tax, shall, therefore be Rs. 5,900 (Rs. 6,000 less Rs. 100, tenant's liability towards municipal tax paid by the owner).

† (2) In the above illustration if the total amount of local taxes payable in respect of the property is Rs. 1,800 of which Rs. 300 is paid by the tenant direct to the local authority, in addition to the rent of Rs. 6,000 paid to the owner, and the balance of local taxes viz Rs. 1,500 is paid by the owner.

Solution

Since half the amount of total local taxes, i. e. Rs. 900, is more than one-eighth of the annual value of the property, one-eighth will be treated as tenants liability.

$$\begin{aligned}\text{Annual value} &= (\text{Rs. } 6,000 + \text{Rs. } 300) \text{ Less } \frac{1}{9}\text{th of Rs. } 6,300 \\ &= \text{Rs. } 6,300 \text{ Less Rs. } 700 \\ &= \text{Rs. } 5,600.\end{aligned}$$

(3) Annual rent payable by the tenant in respect
of the property

	Rs. 2,000
Tax on above property levied by local authority	300
Paid by the tenant	Rs. 150
Paid by the owner	Rs. 150

Solution

Rent payable by the tenant	Rs. 2,000
Add portion of tax paid by the tenant in addition to above rent	<u>150</u>
Total	2,150
Less half the amount of local tax allowed, it being less than one eighth of the annual value which comes to Rs. 2,000	<u>150</u>
Annual value of property for the purpose of taxation	2,000

(4) In the above illustration if the tax payable is Rs. 600 of which Rs. 200 is paid by the tenant and Rs. 400 by the owner.

Solution

Rent payable by the tenant	Rs. 2,000
Add portion of tax paid by the tenant in addition to above rent.	<u>200</u>
	2,200
Less allowance in respect of local tax limited to one-eighth of annual value which comes to Rs. 1, 956	<u>244</u>
Annual value	Rs. <u>1,956</u>

(5) If in illustration (4) above whole of the local tax is payable by the owner.

Solution

Annual rent payable by the tenant	Rs. 2000
Less allowance in respect of local tax limited to one eighth of annual value which comes to Rs. 1,778	<u>222</u>
Annual value of property	Rs. 1,778

No allowance is due in respect of interest or any annual charge chargeable under the Act which is payable outside the taxable territories (not being interest on a loan issued for public subscription before the first day of April 1938) unless in respect of such interest or charge tax has been paid or from which tax has been deducted under section 18, or in respect of which there is an agent under section 43.

Both, annual charge and interest, may be deducted if they have fallen due, though not actually paid.

When out of the family property income a Hindu widow is required to be paid a maintenance allowance by a decree of court such an allowance is a permissible deduction from the income of the property

4. Any sum paid on account of land revenue in respect of the property.

5. *Collection charges*—any sum actually spent by the assessee in collecting rent from the tenants provided the amount does not exceed the prescribed maximum. By rule 7 of the Income tax rules 6 per cent., for the time being, is fixed as the maximum amount allowable for this purpose.

Legal expenses incurred in recovering rents from tenants are allowed after deducting any costs recovered from the opposite party,

6. *Unrealized rents*—

According to the notification of the Central Government, under section 60, of the Indian Income Tax Act, unrealized rents which are proved as lost and irrecoverable, are allowed to be deducted if the following conditions are satisfied:—

(a) the tenancy is bona fide.

(b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate, the property.

(c) the defaulting tenant is not in occupation of any other property of the assessee.

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Income-tax Officer that legal proceedings would be useless; and

(e) the annual value of the property to which the unpaid rent relates has been included in the assessed income of the year during which that rent was due and income-tax has been duly paid on such assessed income.

7. *Vacancy allowance*—

If a property remains vacant a proportionate amount of gross annual value will be allowed to be deducted. Vacancy primarily applies to those houses which are usually let out to tenants and it refers to the period between the two tenancies.

Loss on property.

As a result of various permissible deductions and allowances, there may some times be loss from property instead of income. Such a loss can be set off under section 24, like other losses,

against income of the assessee under other heads

Exempted Property Income

Any income chargeable under this head in respect of buildings the erection of which is begun and completed between the first day of April 1946 and 31st day of March, 1952, (both dates inclusive) is exempted from payment of tax for a period of two years from the date of such completion

Illustrations:

(1) From the following information calculate taxable income of Mr. X, for 1951-52 Assessment, under the head 'property'.

(Property during 1950-51)

Property	Municipal Valuation Rs.	Let at Rs.	Annual Charge Rs.	Ins Prem Rs.	Exp on repair Rs.	Remarks.
House No.1	1 500	2 000	Ground rent 150	—	150	Int on mort. loan for marriage Rs. 320
" " 2	1,500	1,200	—	40	300	Remained vacant for 3 months
" " 3	750	750	Land revenue 50	30	—	Tenant migrated to Pakistan, rent for 3 months irrecoverable
" " 4	600	—	—	—	300	Occupied for personal residence
Open land Motor Stand	—	500	Land revenue 60	—	500	spent on hilling

House No. 3, was purchased in 1948, for Rs. 15,000 of which Rs. 6,000, was borrowed from bank at 6 per cent. per annum interest and was paid off on 31st October, 1950.

Legal expenses in recovering arrears of rent from a tenant of house No. 1, amounted to Rs. 350 of which Rs. 270 was recovered from him by court decree. Expenses on rent collection came to Rs. 160.

Solution:*Income from 'property'*

	House No. 1	House No. 2	House No. 3	House No. 4	Total
	Rs. 2,000	Rs. 1,500	Rs. 750	Rs. 600	Rs. 4,850
Annual Value					
Less:					
1. <u>one-sixth for repairs</u>	333	250	125	100	808
2. annual charge	150	—	50	—	200
3. mortgage interest	320	—	—	—	320
4. insurance premium	—	40	30	—	70
5. vacancy allowance	—	375	—	—	375
6. irrecoverable rent	—	—	250	—	250
7. int. on loan	—	—	210	—	210
8. irrecoverable leg. exps.	80	—	—	—	80
Total	883	665	665	100	2,313
Income	1,117	835	85	500	2,537
Less collection charges					160
Net income from property				Rs.	2,377

Notes:—(1) It is presumed that the total income of the assessee is Rs. 6,000 or more, so that the annual value of the residential house can be taken at Rs. 600, (its municipal value) for income-tax purposes.

(2) Total allowance for collection charges including legal expenses, should not exceed 6 per cent. of the annual value minus amount allowed for vacancy. Any cost recovered from the opposite party is deducted from the legal expenses. Collection charges are not allowed in respect of property in the occupation of the assessee.

(3) Income from open land —Rs. 840 (Rs. 900 minus Rs. 60 land revenue) will not be taxed under 'property' but it will be taxed under 'income from other sources' (sec. 12). Rs. 500, spent on filling is capital expenditure on this land.

(2) Shri Lakhpat Rai owns several house properties, the annual letting value of which amounts to Rs. 25,000, including Rs. 7,000 for a bungalow, in which he resides. He claims the

following expenses in addition to the statutory allowance for repairs, viz. Rs. 100 for insurance premium, Rs. 800 for interest on mortgage, Rs. 500 for vacancy allowance, Rs. 25 for ground rent, Rs. 10 for land revenue, and Rs. 1,200 for rent collection charges, Ascertain his taxable income and the amount of tax payable by him, assuming that he has no other income

Solution

<i>Taxable income from property of Shri Lakhpat Rai :</i>		
Annual value of the property let		Rs. 18,000
Annual value of property used for residence		Rs. 1,365
	Total	Rs. 19,365
Less deductions allowed :	Rs.	
Repairs (1/6th of Rs. 19,365)	3,227	
Insurance	100	
Interest on mortgage	800	
Vacancy allowance	500	
Ground rent	25	
Land revenue	10	
Rent collection charges	1,050	Rs. 5,712
	Taxable Income	Rs. 13,653

Notes :—(1) Vacancy allowance is not deducted for calculating 1/6th statutory allowance for repairs.

(2) Vacancy allowance is deducted for calculating 6 per cent. (maximum amount allowed) in respect of collection charges of rent.

(3) Annual value of the residential house is calculated as follows :—

Let the annual value be X

Then $X = 1/10$ th of total income

$$\text{Total income} = (18,000 - (3,000 + 100 + 800 + 500 + 25 + 10 + 1,050) + X - X/6)$$

$$X = 1/10 \text{ of } (12,515 + 5X/6)$$

$$= 1,251 + X/12$$

Therefore $X - X/12 = 1,251$

$$11X/12 = 1,251$$

$$X = 1,365.$$

Another method of finding out the annual value of the residential property is :—

1/10 of 12/11 of rest of the income (net income)

This will give value of the residential house without deducting 1/6th for repairs which should be deducted afterwards.

In this case it will work out as

1/10 of 12/11 of 12,515 = 1,365.

Note—Rs. 12,515 is the rest of the income arrived at as in respect of above method.

There is yet another method of finding out the annual value of residential house. It is—

Annual value of residential house minus 1/6th for repairs = 1/11 of rest of the income.

Therefore X minus X/6 = 1/11 of 12,515

$5X/6 = 1,138$

$X = 1,138 \times 6 \div 5 = 1,365$

Amount of tax payable by him on a total income of Rs. 13,653 will be calculated as follows :—

(On the basis of rates for 1951-52 assessments)

<i>Amount</i>	<i>Rate of tax per rupee</i>	<i>Amount of tax</i>	<i>Surcharge at 5%</i> <i>of tax</i>
On first Rs. 1,500	nil	nil	nil
		Rs. as.	Rs. As.
On next Rs. 3,500	9 pies	164 - 1	8 - 3
On next Rs. 5,000	one anna 9 pies	546 14	27 - 6
On next Rs. 3,653	3 annas	684 - 15	34 - 4
		<u>1,395 - 14</u>	<u>69 - 13</u>

Total tax payable :—

Tax	Rs. 1,395-14
Surcharge	69-13
	<u>Rs. 1,465-11</u>

(3) Mr. Raja Ram owns a house property of the annual rental value of Rs. 8,000, which he has let to Mr. Daulat Ram

at Rs. 7,000 per year who undertakes to meet the cost of repairs also. Mr Raja Ram took a first loan of Rs. 30,000, at 6 per cent. per annum to build the house property and subsequently mortgaged it against a loan of Rs. 10,000 carrying 5 per cent. interest. Rs. 250 is payable in respect of the ground rent of the property.

Calculate taxable income from property.

Solution

	Amount.
Annual value	Rs. 8,000
Less permissible deduction—	
(a) Repairs—difference between the annual value and the amount at which let, but not exceeding 1/6th of annual value	Rs. 1,000
(b) Interest on loan	1,800
(c) Interest on mortgage loan	500
(d) Ground rent	250
	<u>3,550</u>
Taxable income from property	<u>4,450</u>

(ii) If rent paid by Mr. Daulat Ram is Rs. 6,000, taxable income from property will be computed as follows :—

Annual Value	Rs. 8,000
Less Permissible deduction	
(a) Repairs 1/6th of annual value	Rs. 1,333
(b) Interest on loan	1,800
(c) Interest on mortgage loan	500
(d) Ground rent	250
	<u>3,883</u>
Taxable income from property	<u>4,117</u>

∴ (4) X is employed in a firm on Rs. 800 per month. He contributes 6½% of his salary towards a recognised provident fund, the employer contributing an equal amount. Interest on his Provident Fund account for the year amounted to Rs. 672.

He also owns two houses—one (Municipal valuation Rs. 800) occupied by him for his residence and the other Municipal Valuation Rs. 1,000) let at Rs. 100 per month. His expenses in respect of property were :—

(a) Interest on mortgage on houses	Rs. 1,200
(b) Land revenue for both the houses	40
(c) Premium for fire insurance	120
(d) Interest on loan taken to repair residential house	125
(e) Cost of extension of electric fittings.	105

The house which is let remained vacant for two months during the year. He paid Rs. 850 as premium on his life policies

Ascertain his Total Income and Exempted Income.

1. *Income from Salary—*

	Rs.	Rs.
Salary @ 800 per month	9,600	
Employer's contribution to Provident Fund.	600	
Interest on Provident Fund	672	10,872

2. *Income from Property—*

	Let. Rs.	Occupied Rs.	
Annual Value	1,200	800	
Less Expenses allowed—			
Repairs	200	133	
Mortgage Int.	720	480	
Land Revenue	24	16	
Insurance Premium	72	48	
Int. on loan for repairs		125	
Vacancy allowance	200	1,216	802
	<hr/>	<hr/>	<hr/>
	—16	—2	—18
			<hr/>
		Total Income	10,854
Less Earned Income Allowance			2,174
		Taxable Income	<hr/>
			8,680

Exempted Income

1. Provident Fund Contribution both of the employer and the employee	Rs. 1,200
2. Life Ins. premium (this together with P. F. contribution should not exceed 1/6th of total income. Total Income here means excluding employer's contribution to P. F. and interest thereon)	397
3. Interest on Provident Fund.	672
Total	Rs. 2,269

Note — 1 Cost of extension of electric fittings is a capital expenditure and thus not deductible

2. Vacancy allowance Proportionate Relief is given for the period for which property remained vacant.

* 44(5) Calculate the Taxable Income of X from the following information—

(a) Draws salary at Rs. 600 per month.

(b) Holds the following Securities:—

(i) Rs. 20,000 4% Municipal Debentures, interest payable on January 1 and July 1.

(ii) Rs. 10,000 3% Government Bonds; interest payable on April 1 and October 1.

(c) Occupies his own house for residence (Annual Valuation Rs. 2,000) The property is subject to mortgage of Rs. 25,000— 6% per annum interest payable on March 31.

(d) Paid Rs. 1,200 for life insurance premium and contributed 5% of his salary to an official Provident Fund.

Solution

Statement of Total Income	Rs.
1. Income from Salary @ Rs. 600 per month	7,200
2. Income from Securities—	
Rs. 20,000 4% Municipal Debentures	800
Rs. 10,000 3% Government Bonds	300

3. Income from Property (occupied)	Rs.	
Annual Value	742*	
Less allowable expenses—		
1/6th for repairs	124	
Interest on Mortgage	1,500	1,624
		—882
	Total Income	7,418
Less Earned Income Relief		1,440
	Taxable Income	5,978
Exempted Income	Rs.	
1. Provident Fund	360	
2. Insurance Premium	876	
	1,236	

Note:—Provident fund together with life insurance premium is exempted from Income tax only to the extent of 1/6th of the total income or Rs. 6,000 whichever is less.

The tax shall be calculated on Rs. 5,978 and a rebate shall be given on Rs. 1,236 at average rate applicable to an income of Rs. 5,978. The assessee has already paid tax at source on salary and securities. The excess of what he has paid at source over what is due, will be refunded to him.

* This is ascertained as below—

Supposing the gross annual value of the property occupied is X. Then the total income will be—

$$7,200 + 800 + 300 + (X - 1/6X - 1,500)$$

$$\text{or } X - 1/6X + 6,800$$

Therefore $X = 1/10 \text{ of } (X - 1/6X + 6,800)$

$$= 1/12X + 680$$

$$= 742$$

Or, on the basis of $1/10 \text{ of } 12 \text{ 11 of } (7,200 + 800 + 300 - 1,500)$
 $= 742.$

SECTION 10

PROFITS AND GAINS OF BUSINESS, PROFESSION AND VOCATION

(1) The tax shall be payable by an assessee under the head “Profits and gains of business, profession or vocation” in respect of the profits or gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:—

- (i) any rent paid for the premises in which such business, profession or vocation is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional annual value of the part so used ;
- (ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;
- (iii) in respect of capital borrowed for the purposes of the business, profession or vocation, the amount of the interest paid :

Provided that no allowance shall be made under

this clause in any case for any interest chargeable under this Act which is payable without the taxable territories, not being interest on a loan issued for public subscription before the 1st day of April 1938, except interest on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent in the taxable territories who may be assessed under section 43 or, in the case of a firm, for any interest paid to a partner of the firm;

Explanation—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, profession or vocation the amount of any premium paid;
- (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;
- (vi) in respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee, a sum equivalent, where the assets are ships other than ships ordinarily plying on inland waters to such percentage on the original cost thereof to the assessee as may, in any case or class of cases be prescribed and in any other case, to such percentage on the written down value thereof as may in any case or class of cases be

prescribed and where the buildings have been newly erected, or the machinery or plant being new has been installed, after the 31st day of March 1945, a further sum (which shall however not be deductible in determining the written down value for the purposes of this clause) in respect of the year of erection or installation equivalent,—

(a) in the case of building the erection of which is begun and completed between the 1st day of April 1946 and 31st day of March 1952 (both days inclusive), to fifteen per cent of the cost thereof to the assessee ,

(b) in the case of other buildings, to ten per cent of the cost thereof to the assessee ,

(c) in the case of machinery or plant, to twenty per cent of the cost thereof to the assessee ;

Provided that—

(a) the prescribed particulars have been duly furnished ,

(b) where full effect cannot be given to any such allowance in any year not being a year which ended prior to the 1st day of April, 1939, owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of clause (b) of the proviso to sub-section (2), of section 24, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to the allowance for that year, and so on for succeeding years, and

(c) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886 (II of 1886), shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant or furniture, as the case may be;

- (via) in respect of depreciation of buildings newly installed, after the 31st day of March, 1948, a further sum (which shall be deductible in determining the written down value) equal to the amount admissible under clause (vi) (exclusive of the extra allowance for double or multiple shift working of the machinery or plant and the initial depreciation allowance admissible under that clause for the first year of erection of the building or the installation of the machinery or plant) in the assessments for each of the five years commencing on the first day of April, 1949, and ending with the 31st day of March, 1954 :

Provided that where, in respect of such machinery or plant, the assessee establishes that the market value of similar machinery or plant on the 31st day of March, 1953, is lower than the original cost, than, subject to the provisions for the clause (vi), there shall be made in the assessment for the year commencing next after that date a further allowance (which shall be deductible in determining the written down value) of an amount by which the written down value of the machinery or plant as on that date (without deduction of the initial depreciation admissible in the first year) would have

exceeded the corresponding written down value thereof as on the same date if the market price of the machinery or plant had been taken as the actual cost to the assessee ;

- (vii) in respect of any such building, machinery or plant which has been sold or discarded or demolished or destroyed, the amount by which the written down value thereof exceeds the amount for which the building, machinery or plant, as the case may be, is actually sold or its scrap value :

Provided that such amount is actually written off in the books of the assessee :

Provided further that where the amount for which any such building, machinery or plant is sold, whether during the continuance of the business or after the cessation thereof, exceeds the written down value, so much of the excess as does not exceed the difference between the original cost and the written down value shall be deemed to be profits of the previous year in which the sale took place :

Provided further that where any insurance, salvage or compensation moneys are received in respect of any such building, machinery or plant which has been discarded or demolished or destroyed, and the amount of such moneys does not exceed the written down value, the amount allowable under this clause shall be the amount, if any by which the difference between the written down value and the scrap value exceeds the amount of such moneys:

Provided further that where any insurance, salvage or compensation moneys are received in respect of any

such building, machinery or plant as aforesaid, and the amount of such moneys exceeds the difference between the written down value and the scrap value no amount shall be allowable under this clause and so much of the excess as does not exceed the difference between the original cost and the written down value less the scrap value shall be deemed to be profits of the previous year in which such moneys were received:

Provided further that for the purposes of this clause, the original cost of the building, the written down value of which is determined in accordance with the first proviso to sub-section (5), shall be deemed to be the written down value so determined as at the date of its being brought into use for the purposes of the business, profession or vocation;

- (viii) in respect of animals which have been used for the purposes of the business, profession or vocation otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;
- (ix) any sums paid on account of land revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business, profession or vocation ;
- (x) any sum paid to an employee as bonus or commission for services rendered, where such sum ~~would~~ not have been payable to him as profits or dividend if it had not been paid as bonus or commission :

Provided that the amount of the bonus or commission is of reasonable amount with reference to—

(a) the pay of the employee and the conditions of his service;

(b) the profits of the business, profession or vocation for the year in question; and

(c) the general practice in similar businesses, professions or vocations;

(xi) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money lending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year;

(xii) any expenditure (not being in nature of capital expenditure) laid out or expended on scientific research related to the business;

(xiii) any sum paid to a scientific research association having as its objects the

undertaking of scientific research related to the class of business carried on, and any sum paid to a university, college or other institution to be used for such scientific research:

Provided that such association, university, college or institution is for the time being approved for the purposes of this clause by the prescribed authority;

- (xiv) in respect of any expenditure of a capital nature on scientific research related to the business, an allowance for each of the five consecutive previous years beginning with the year in which the expenditure was incurred, or where the expenditure was incurred prior to the commencement of the business for each of the five consecutive previous years beginning with the year in which the business was commenced, equal to one-fifth of such expenditure;

Provided that no allowance shall be made for any expenditure incurred more than three years before the commencement of the business :

Provided further that —

(a) Where an asset representing scientific research expenditure of a capital nature ceases to be used for scientific research related to such business—

- (i) no allowance shall be made in respect of any previous year after the previous year in which the cessation takes place, and
- (ii) if the aggregate of the amounts allowed under this clause added to the value of the asset

immediately before the cessation is less than the said expenditure, there shall also be allowed in respect of the previous year in which the cessation takes place an additional deduction equal to the difference;

(b) where such asset is sold without having been used for other purposes, the sale proceeds shall be taken to be the value of the asset immediately before the cessation, and if an additional allowance or a greater additional allowance would have been made in respect of the previous year in which the cessation occurred on the basis of that value, an amount equal to the additional allowance which would have been made or, as the case may be, to the difference between the additional allowance which would have been made and the additional allowance which was made for that year shall be made in respect of the previous year in which the sale occurs;

(c) where the proceeds of the sale plus the total amount of the allowances made under this clause exceeds the amount of the expenditure, the excess or the amount of the allowances so made, whichever is the less, shall be treated as a receipt of the business accruing at the time of the sale;

(d) where a deduction is allowed for any previous year under this clause in respect of expenditure represented wholly or partly by any asset, no deduction shall be allowed under clause (vi) or clause (vii) for the same previous year in respect of that asset;

(e) where an asset is used in the business after it ceases to be used for scientific research related to that business, and a claim for an allowance under clause (vi) or clause (vii) is made in respect of that asset, the actual

cost to the assessee of the asset shall be treated as reduced by the amount of any deductions allowed under this clause:

(f) clause (b) of the proviso to clause (vi) shall apply in relation to deductions allowable under this clause as it applies in relation to deductions allowable in respect of depreciation;

(g) if any question arises under clause (xii), clause (xiii) or this clause as to whether, and if so to what extent, any activity constitutes or constituted or any asset is or was being used for, scientific research, the Central Board of Revenue shall refer the question to the prescribed authority, whose decision shall be final;

Explanation—In clause (xii), clause (xiii) and this clause—

(i) "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge;

(ii) references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research, but, save as aforesaid, include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of scientific research;

(iii) references to scientific research related to a business or class of business include —

(a) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class;

(b) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, businesses of that class;

(xv) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly

and exclusively for the purposes of such business, profession or vocation;

(3) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

(4) Nothing in clause (ix) or clause (xv) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains; and nothing in clause (xv) of sub-section (2) shall be deemed to authorise—

(a) any allowance in respect of a payment which is chargeable under the head 'Salaries' if it is payable without the taxable territories and tax has not been paid thereon nor deducted therefrom under section 18; or

(b) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm; or

(c) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head 'Salaries'.

(5) In sub-section (2), 'paid' means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section; 'plant' includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation; and 'written down value' means—

(a) in the case of assets acquired in the previous year, the actual cost to the assessee;

Provided that where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business and the Income-tax Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly, to the assessee, was a reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee be such an amount as the income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, determine having regard to all the circumstances to the case.

(b) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act, or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886 was in force:

Provided that in the case of a building previously the property of the assessee and brought into use for the purposes of the business, profession or vocation after the 28th day of February, 1946, 'written down value' means the actual cost to the assessee reduced by an amount equal to the depreciation calculated at the rate in

force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee and had the provisions of this Act relating to the allowance for depreciation been in force on and from the date of acquisition :

Provided further that where the provision of the proviso to sub-section (2) of section 26 are applicable, the actual cost to the assessee referred to in clauses (a) and (b) shall be the actual cost to the person succeeded in the business, profession or vocation:

(6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

(7) Notwithstanding anything to the contrary contained in sections 8, 9, 10, 12 or 18, the profits and gains of any business of insurance, and the tax payable thereon, shall be computed in accordance with the rules contained in the Schedule to this Act.

Prior to the amendment of the Act in 1939, this section was divided into two sections—section 10 dealing with tax on income from business and section 11 dealing with tax on income from profession or vocation. For the reasons already explained earlier under section 6, the two sections have been combined under section 10 and section 11 has been deleted. Another change brought about by the amended Act is the introduction of sub-section 6 by which profits and gains of a trade, professional or similar association performing specific services for its members for remuneration definitely related to these services are made liable to tax, and sub-section 7 which provides that the profits and gains of an insurance business, and the tax payable

thereon, shall be computed in accordance with the rules contained in the schedule to the Income tax Act.

Under section 10 tax is levied on the person who carries on the business, profession or vocation. Sub-Section (4) of section 2 defines business as including any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. Profits of even isolated transactions or of speculation are taxable if in the transaction ordinary methods business or trade are adopted. Word 'Profession' refers to legal, engineering, medical, accountancy profession etc. which require purely intellectual skill. Other pursuits like those of brokers and agents are called vocations. Business may be carried on by him personally or through employees or agents. Income from foreign business is also computed in accordance with the provisions of this section. If a person lends his name to a firm simply for the sake of credit, and without any interest in its profits and gains, such a person is not liable to tax in respect of the income, or any portion of Income, of the firm.

// The words 'profits' and 'gains' used in this section mean the same thing. They mean trading profits and do not include any capital receipts. They are ascertained on ordinary principles of trading and accounting. Income-tax law does not prescribe any special method for computing profits of a business. It simply lays down the allowances and deductions which are, or are not, permissible in arriving at correct amount of profit.

A person is assessed in respect of income from business profession or vocation only so long as the business, profession or vocation is being carried on. There cannot be any charge, or no allowance is permissible, if the business or profession has ceased, e. g. an amount which has once been written off as bad debt and allowed as deduction in the firm's assessment, is treated as taxable income if recovered later on, but it will be treated as capital receipt if in the meantime the business has been discontinued. Similarly if a lawyer who keeps his accounts on 'cash system' of accounting gives up practice and takes to

service the arrears of fees recovered afterwards (after the end of the accounting year) would be capital receipts and as such not liable to tax. But if the amount was realized after the cessation of the profession and before the end of the accounting year it would have been revenue receipt and as such taxable. It should be noted that for this purpose the business or profession should have been completely discontinued. While it may be easy for a professional man to get out of the business at the shortest possible notice it may be slightly difficult for a businessman to do so. If a businessman stops taking new business but stays for completing old contracts or for collecting book debts the business is not completely discontinued.

Where different businesses are being carried on by an assessee each is regarded as a separate business for the purposes of this section so that allowances in respect of one cannot be allowed against the profits of the other. But profits from all the businesses carried on are aggregated (loss from one business, if any, being adjusted against profits of others) and assessed to tax. If the loss from any business is so large that it cannot be adjusted against income of the other business or businesses of the assessee [sec. 10 (1)] and cannot be set off against income of the assessee from other heads, in the same year under section 24 (i), it can be carried forward and set off against the income of the assessee from the same business next year or in the following years (for a period of six years) under section 24 (2),

Sub section (2) of this section lays down a list of deductions and allowances which are permissible against the income of a business in order to arrive at net taxable income. With regard to these deductions it should be noted that they can be claimed against the income of the very business in respect of which they are incurred provided the business is being carried on and its profits are taxable. The deductions must be claimed in the year of their respective expenditure. The list is not exhaustive and has to be modified in the light of decisions of

courts in respect of income-tax cases.

Following is the list of deductions and allowances :—

- (i) *Rent of premises*—Rent paid in respect of the premises in which the business is being carried on is allowed. If only a part of the premises is used for the business purposes and a substantial portion of it is used for the residence of the proprietor, only that portion of the rent which is attributable to the portion used for business, and as fixed by the Income-tax Officer, will be charged to business. However, rent paid in respect of the residence and quarters for the staff and employees of the firm will be allowed to be deducted. If the premises belong to the proprietor no deductions in respect of rent of the premises are permissible. Such premises are exempt from tax under Section 9 (Income from Property). Of course rent paid to a partner is allowed. The amount of rent is allowed even if it fluctuates with the amount of profit; in that case it is not treated as sharing in profits.
- (ii) *Repairs to premises where the assessee is the tenant only*—Repairs to premises where the assessee is the owner are dealt with in clause (v). If by the contract of tenancy the assessee has undertaken the liability in respect of the repairs to premises and the expense has actually been incurred and payment made, the amount spent on repairs shall be allowed. If the premises are used partly for the residence of the proprietor also only a proportionate amount, will be allowed.
- (iii) *Interest on borrowed capital*—Interest on capital borrowed for the purposes of business, profession or vocation is allowed provided the borrowing is genuine. It is allowed even if it is dependent on, and varies with, the amount of profits earned. Interest payable outside the taxable territories is allowed only when

tax thereon has been paid, or deducted or is recoverable from an agent under section 43, except in the case of a public loan issued before 1st April, 1938. Interest paid on capital borrowed in taxable territories for a business in a foreign country is a permissible allowance under certain conditions. Interest paid to partners on loans advanced by them to the firm is not allowed. Interest on unpaid price (reduced balance) of a capital asset bought on a long term credit with stipulation for payment of interest is not allowable.

For Interest to be allowed it is not necessary that actual cash should have been paid. Passing of adjusting entries in the books of accounts is quite sufficient when accounts are kept on mercantile basis. No allowance, of course, is permissible merely on the ground that interest has become due. In order for it to be allowed adjusting entries must have been passed.

- (iv) *Insurance premia*—Any premium paid in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores used for the purposes of business, profession or vocation (and not kept idle) are allowed. Such user must be during the accounting year and in the particular business against the profits of which the allowance is claimed. Though not specifically provided by the Act the Income-tax Officers are instructed to allow to the assessee (under cl. XV) the amount of premium paid by him on a policy of insurance against loss of any profit consequent on damage by fire to plant and premises because it has now been held that any amount received by the assessee under any such policy is taxable. Premium on any other policy of insurance policy which the assessee might have allowed under this clause.

In order to claim exemption the premium must be actually paid. No deduction can be allowed if the amount is merely set apart by creating an insurance reserve fund. But sums actually paid to an insurance pool of which the business is a member are permitted to be deducted.

- (v) *Current repairs*—Under this clause allowance is granted of the amount paid in respect of current repairs to buildings, machinery, plant, or furniture of which the assessee is the owner, and which are used by him for the purposes of his business, profession or vocation. 'Current repairs' mean such repairs as are necessary to make good the loss caused in the value of an asset on account of wear and tear in ordinary course and to keep the asset in a fit condition for use. It includes even minor renewal and replacement of parts. If the repairs are such as add to the value of the asset over what has been lost out of them during current use, the expenditure is of capital nature and as such not allowable. Initial expenditure on a second-hand asset purchased is not current repair. Repairing charges may not be incurred year after year but accumulated repairs may be effected in one year after several years.

- (vi) & (via) *Depreciation*—The term 'depreciation' has been defined in the books of accounts as loss or diminution in the value of an asset consequent upon wear and tear, obsolescence, effluxion of time or permanent fall in market value.' For the purposes of this subsection it means depreciation due to wear and tear through use only.

Allowance for depreciation can be claimed in respect of such buildings, machinery, plant or furniture as are property of the assessee and are used for the purposes of business, profession or vocation during the accounting year. Depreciation can be allowed to the owner even if the machinery has been

leased to another person, but the lessee is not entitled to claim depreciation allowance. According to the provision of Income-tax law depreciation cannot be allowed on an asset which is acquired on hire purchase agreement, because the purchaser does not become its legal owner until all the instalments fixed by the agreement are paid, but under administrative instructions of the Central Board of Revenue it can be allowed if certain conditions are fulfilled.

Depreciation is allowed only on account of user, that is only when the asset is actually used or intended to be used and not when it is lying idle. If under a pool arrangement the owner of a ginning factory is obliged to keep his machinery in good repair and condition so that it may be worked as and when necessary, the machinery can be said to be used and will attract full depreciation allowance even though the factory worked only for part of the year, or did not work at all. If the user is partial, that is if the asset is used for part of the year only a proportionate depreciation allowance based on the number of complete months of use is allowable. Prior to the assessment year 1948-49, depreciation was allowed for full year (at full rate) even though the asset was acquired in the middle of the year and was used for part of the year only. But (by the notification of the Central Government dated 15th May, 1948) with effect from the assessment year 1948-49, depreciation allowance is calculated according to the complete months during which the asset is used in the year in which it is acquired. The periods of labour trouble, such as strikes and lockouts, during which the machinery etc. had perforce to remain idle should not be excluded from the period for which depreciation would be admissible. Where the major part of the machinery was worked for the full year and only a small part remained idle, depreciation should be allowed at the full rates admissible. In the case of a Jute Mill, for example, where 900 out of 1,000 looms were worked for the whole year full depreciation should be allowed. User may be partial from the point

of view of purpose also, *e. g.* a motor car may be used partly for the business and partly for the private purposes of the proprietor. However, in the case of seasonal factory full depreciation allowance can be claimed if the factory has worked during whole of the working season.

According to the present law depreciation is allowed on buildings, machinery, plant and furniture on their 'written down' value; on ocean-going ships it, however, continues to be allowed on their original cost. The rates of depreciation are different in cases of different types of assets, and are prescribed by rules framed by the Central Board of Revenue.

An extra allowance up to a maximum of 50 per cent. of the normal allowance will be allowed by the Income-tax Officer where a concern claims such allowance on account of double-shift working and satisfies the income-tax Officer that the concern has actually worked double-shift. An extra allowance up to a maximum of 100 per cent. of the normal allowance instead of 50 per cent. will be allowed in the assessments for five years commencing with the assessment for the year 1949-50, where a concern proves that there has been triple-shift working. The calculations of the extra allowances for double-shift and for triple-shift shall be made separately proportionately to the number of days during which there was only double-shift working and during which there was triple-shift working. For the purpose of granting this extra allowance the normal number of working days throughout the year will be taken as 300 and if, for example, a concern has worked only double-shift for 100 days and triple shift for another 100 days the extra allowance for double-shift will be $\frac{1}{3}$ of 50 per cent. of the normal allowance for the whole year and that for triple shift will be one-third of 100 per cent. of the normal allowance for the whole year. This applies to all concerns whether the general rate or any special rate applies to them, but does not apply to an item of machinery or plant specially excepted by the letters "N. E. & A." being shown against it.

For this purpose the normal allowance means the amount of depreciation allowance for the year calculated in accordance with Rule 8 (rule regarding depreciation allowance), but excluding the extra depreciation allowance for multiple shift working or for new plant and machinery.

Note—Letters N. E. S. A. are a contraction of the expression “No extrashift allowance”.

“Written down value” means—

- (i) in the case of an asset acquired in the previous year, the actual cost to the assessee;
- (ii) in the case of assets acquired before the previous year it is the actual cost to him less all depreciation actually allowed to him, except, initial depreciation, if any.

Actually allowed means allowance given to the assessee in his assessment. If in any year on account of loss in the business depreciation could not be allowed, it will not mean as actually allowed.

- (iii) In the case of buildings which belonged to the assessee but brought into use for the purpose of his business, after 28th February, 1946, the actual cost to the assessee minus such depreciation as would have been allowed had the building been used for the purpose of the business since the very beginning. The rate for calculating depreciation for this intervening period will be the rate in force on the date of the introduction of the building into the business.

“Original cost” means the cost to the assessee—the price he has paid for the asset. In case he has incurred any expenditure on its transport or erection, that will also form part of the original cost. If the assessee has received any contribution or grant for the purchase or acquisition of the asset such contribution or grant shall not be deducted from the cost of the asset

for the purpose of calculating depreciation allowance. If the assessee has got the asset as a free gift and has incurred no expense on it, he will not be entitled to any depreciation allowance because it costs him nothing.

Some times it may so happen that a person may transfer an asset, which he was using for his business, to another person, for an amount higher than its real value, with the object that this another person may benefit by getting higher depreciation allowance in his assessment. In such a case Income-tax Officer, with the previous approval of Assistant Commissioner of Income-tax, may determine the value of the asset and grant depreciation allowance on the basis of value so determined. What is the original cost of an asset is a question of fact and if the accounts and documents show a fictitious price the Income-tax Officer may ascertain the true price.

If in an year the profits and gains from one of the assessee's businesses are insufficient to allow whole of the permissible depreciation in respect of assets used in that business, the uncovered portion of it can be set off against the profits and gains from assessee's other businesses, or against assessee's income from other sources. If the entire depreciation allowance cannot be covered in one year the uncovered portion of it is called 'unabsorbed depreciation.' 'Unabsorbed depreciation' means the depreciation allowance which is due according to rules but which cannot be claimed in the assessment of the assessee on account of absence or insufficiency of profits. Unabsorbed depreciation can be carried forward to the next and the following years, indefinitely, to be set off against future profits of the assessee's same business. If side by side there is also business loss which is carried forward under section 24 (2), the business loss should be set off first because it can be carried forward for a period of six years only, whereas for carrying forward, and setting off, of depreciation there is no limit.

Post-war special allowance:—In order to encourage construction of residential houses it is provided in section 9 (income

from property) that in respect of the buildings the erection of which began and completed between the first day of April 1946, and 31st day of March, 1952, two years' income from the date of completion of such buildings will be exempt from tax. Similarly in order that the old industries may reconstruct, re equip and modernise their old and worn out plant, and new industrial concerns may be started, provision of following allowances is made:—

- (i) *Initial depreciation.*—which is granted for one year only (the year of erection or installation) in addition to the regular depreciation and which is not taken into account in working out the written down value, at the following rates:—
 - (a) New machinery and plant—installed after 31st March, 1945 at 20 per cent. of the cost thereof to the assessee;
 - (b) Buildings—erected after 31st March, 1945, at 10 per cent of the cost thereof to the assessee, except in the case of those erected between 1st April, 1946 and 31 March, 1948, in which case it is 15 per cent. of the cost.
- (ii) *Double depreciation.*—According to clause (via) added to this Act, by the Taxation Laws Act of 1949, it is provided that in respect of all new buildings erected and all new plant and machinery installed, after 31st March, 1948, a further sum, equal to the amount of regular depreciation under clause (vi), (which shall be deductible in determining the 'written down value') will be allowed as additional depreciation, in the assessment for each of the five years commencing on 1st day of April, 1949 and ending with 31st day of March, 1954. In calculating this further sum to be allowed any amount allowable in respect of double or multiple shift working of the plant and machinery, and the amount of the 'initial depreciation allowance' (admissible as above for the first year only of the erection of the building or the installation of the

machinery or plant) shall not to be taken into account.

- (iii) *Allowance for reduction in price.*—The high prices of plant and machinery ruling at present are not likely to last very long, and, therefore, a businessman may feel reluctant to invest large sums of money in capital assets at this juncture. The advantages conferred by the Act in the form of 'initial depreciation' and 'double depreciation' may not give him sufficient temptation to take the risk of falling prices. It is, therefore, further provided that if the assessee proves to the satisfaction of the Income-tax Officer that the market value of such machinery or plant on 31st March, 1953, is less than the amount which he spent for it, he will be given allowance of an additional sum equal to the difference between the written down value of the asset in his books on that date and the written down value computed on the basis of reduced price. *

Rates of Depreciation.

Rule 8 of the rules framed under the Income-tax Act lays down the rates of depreciation. Following are the rates prescribed in respect of some of the assets. The percentage is calculated on the written down value of the asset :—

Class of asset	Rate per cent.	Remarks.
I. Buildings—		
(1) First class substantial buildings of selected materials	2.5	Double these numbers will be taken for factory buildings excluding offices, godowns, officers' and employees, quarters.
(2) Second class buildings of less substantial construction		
(3) Third class buildings of construction inferior to that of second class buildings but not including purely temporary erections.	7.5	

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|--|---|
| (4) Purely temporary erections such as wooden structures | No rate is prescribed; renewals will be allowed as revenue expenditure. |
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II. Furniture and fittings—

- | | |
|--|---|
| (1) General | 6 |
| (2) Rate for furniture and fittings used in hotels and boarding houses | 9 |

III. Machinery and Plant—

- | | |
|---|---|
| (1) General rate | 7 |
| (2) Special rates to be applied to certain classess of machinery and plant used in certain concerns. For rates Rule 8 may be referred in the Income-tax Manual. | |

Illustrations

* (1) A firm which closes its accounts on 31st December each year installed a new plant which it purchased at a cost of Rs. 4,00,000, on 1st April 1947. Calculate the depreciation allowance admissible in the assessments of 1948-49 and 1949-50, the rate of depreciation being 10 per cent.

1948-49 Assessment

Original cost	Rs. 4,00,000
Admissible depreciation—	
(i) Initial depreciation	
at 20 per cent	Rs. 80,000
(ii) Normal depreciation	
for 9 months only, at	
10 per cent per annum.	30,000
	<hr/>
	Rs. 1,10,000

1949-50 Assessment

Written down value of the plant:—

Original cost	Rs. 4,00,000
Less depreciation allowed	Rs. 1,10,000
	<u>Rs. 2,90,000</u>

Admissible depreciation—

Normal—at 10 per cent. on

written down value of

Rs. 2,90,000	Rs. 29,000
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(2) If of the admissible depreciation allowance of Rs. 1,10,000, in the assessment of 1948-49, only Rs. 60,000 could be absorbed in the profits of that year, Rs. 50,000, the balance would be *unabsorbed depreciation* and the assessment of 1949-50 would be as follows :—

Written down value of the plant—

Original cost	Rs. 4,00,000
Less depreciation allowed (or actually absorbed)	<u>60,000</u>
	Rs. <u>3,40,000</u>

Admissible depreciation allowance :—

Normal depreciation at 10 per cent.

on Rs. 3,40,000	Rs. 34,000
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Add unabsorbed depreciation of the previous year

	<u>50,000</u>
Total	Rs. <u>84,000</u>

Supposing of the above Rs. 84,000, only Rs. 30,000 could be absorbed in the profits, the balance of Rs. 54,000 would be unabsorbed depreciation, and the depreciation allowance for the assessment of 1950-51 will be calculated as follows :

Written down value of plant—

Original cost of the asset	Rs. 4,00,000
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Less depreciation actually allowed:—

(i) 1948-49 assessment	60,000
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(ii) 1949-50 assessment	<u>30,000</u>
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	<u>90,000</u>
Rs.	<u>3,10,000</u>

Admissible depreciation

Allowance at 10% on Rs. 3,10,000	Rs. 31,000
Add unabsorbed depreciation b/f from previous assessment	<u>54,000</u>
	Rs. <u>85,000</u>

(3) The firm of Messrs Amir Chand Daulat Ram close their accounts on 31st March each year. They purchased a new plant at a cost of Rs. 30,000 on 1st October 1949. This plant was used double shift for 60 days in 1949-50, and triple shift for 150 days in 1950-51.

Find out the amount of depreciation admissible in the assessments of 1950-51 and 1951-52, the prescribed rate of depreciation being 10%.

Solution*1950-51 Assessment*

Written down value (original cost)	Rs. <u>30,000</u>
Amount of Depreciation admissible :—	
(i) Initial depreciation at 20 per cent. of cost	Rs. 6,000
(ii) Normal depreciation at 10 per cent. of cost for half-year	1,500
(iii) Double depreciation (or further depreciation) equal to normal	1,500
(iv) Double Shift allowance $\frac{60}{150}\%$, of 50% of Rs. 1500	300
Total	Rs. <u>9,300</u>

1951-52 Assessment

Written down value of the plant :—

Original cost	Rs. 30,000
Less depreciation allowed (initial depreciation is not taken into account in calculating written down value)	3,300
	Rs. <u>26,700</u>

Amount of depreciation admissible—

(i) Normal depreciation at 10 per cent. of written down value	Rs. 2,670
(ii) Further depreciation equal to normal	2,670
(iii) Triple Shift allowance 150/300 of Rs. 2,670	1,335
	<u>Rs. 6,675</u>

(4) From the particulars of the above illustration calculate the depreciation allowance for the assessments of 1952-53 and 1953-54 also, presuming that the market price of such an asset on 31st March 1952 is Rs. 24,000 and on 31st March 1953, it comes down to Rs. 20,000 and also presuming that other provisions for providing depreciation remain the same as at present.

Solution

1952-53 Assessment

Written down value of the plant—	Rs.
Original cost	30,000
Less depreciation actually allowed:—	Rs.
(i) 1950-51 Assessment	3,300
(ii) 1951-52 „	<u>6,675</u>
	<u>9,975</u>
	<u>20,025</u>
Amount of depreciation admissible:	
(i) Normal depreciation at 10 per cent. of the written down value	Rs. 2,002
(ii) Further depreciation equal to normal	<u>2,002</u>
	<u>4,004</u>

1953-54 Assessment

Written down value of the Plant—	Rs.
Original cost	30,000
Less depreciation actually allowed (or absorbed depreciation)	Rs.
(i) 1950-51 Assessment	3,300
(ii) 1951-52 „	6,675
(iii) 1953-54 „	<u>4,004</u>
	<u>13,979</u>
	<u>16,021</u>

Amount of depreciation admissible—

(i) Special depreciation on account of fall in price of similar Plant to Rs. 20,000 on 31st March 1953— on the basis of Rs. 20,000 as the original cost the written down value will come to Rs. 16,680* (Therefore Rs. 16,021 Less Rs. 10,680)	Rs. 5,341
(ii) Normal depreciation— 10 per cent. on Rs. 10,680	1,068
(iii) Further depreciation equal to normal depreciation	1,068
Total	<u>7,477</u>

Note—No notice will be taken of fall in the price of similar plant to Rs. 21,000, on 31st March 1952.

*** On the basis of Rs. 20,000 original cost of the asset—**

	<i>1950-51 Assessment</i>	Rs.
Written down value (original cost)		<u>20,000</u>
Amount of depreciation admissible—	Rs.	
(i) Initial depreciation	4,000	
(ii) Normal depreciation	1,000	
(iii) Further depreciation	1,000	
(iv) Double shift allowance	200	
		<u>6,200</u>

1951-52 Assessment

Written down value of the plant Rs. 20,000
 Less Rs. 2,200 = 17,800

Amount of depreciation admissible—

	Rs.
(i) Normal depreciation	1,780
(ii) Further depreciation	1,780
(iii) Triple shift allowance	890

4,450

1952-53 Assessment

Written down value of the plant— Rs.
 Rs. 20,000 Less (2,200 + 4,450) 13,850

Amount of depreciation admissible—

(i) Normal depreciation	1,335
(ii) Further depreciation	1,335

2,670

Written down value for the assessment
 of 1953-54

Rs. 20,000 Less (2,200 + 4,450 + 2,670)
 = Rs. 10,680 *

(5) X purchased the following machinery for his business which he started on 1st January, 1950—

(i) New machinery for Rs. 50,000.

(ii) An old machinery from Y for Rs. 30,000.

He set up both the machineries in his own building which was constructed at a cost of Rs. 30,000 in April 1945.

Calculate the amount of depreciation allowance that can be granted to him in his assessment of 1951-52. He closes his accounts on 31st December each year. The prescribed rates of depreciation are—

Machinery ... 10 per cent.

Buildings ... 3 per cent.

Solution:*Building*

	Rs.
Original cost on 1st April 1945	30,000
Depreciation for 1946-47 assessment	900

Written down value	...	29,100
Depreciation for 1947-48 assessment	...	873
Written down value	...	28,227
Depreciation for 1948-49 assessment	...	847
Written down value	...	27,380
Depreciation for 1949-50 assessment	...	821
Written down value	...	26,559
Depreciation for 1950-51 assessment	...	797
Written down value	...	25,762
Depreciation for 1951-52 assessment		773

Machinery:

(a) New Machinery—Original Cost	...	50,000
(i) Initial depreciation 20% of original cost		10,000
(ii) Normal depreciation 10% of original cost		5,000
(iii) Further depreciation equal to normal depreciation		5,000
		<u>20,000</u>

(b) Old Machinery—Original Cost		<u>30,000</u>
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Normal depreciation in 1951-52 assessment at 10% of the original cost		3,000
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Total depreciation allowance in 1951-52 assessment

I Buildings	Rs. 773
II New Machinery	Rs. 20,000
III Old Machinery	Rs. 3,000
Total	<u>Rs. 23,773</u>

(vii) Obsolescence

When a building, machinery or plant is sold or discarded or demolished or destroyed and the sale proceeds or the scrap value, is less than the written down value thereof, the difference will be allowed to the assessee as an 'obsolescence allowance, or 'balancing allowance' or 'balancing depreciation',

provided that such amount is actually written off in the books of the assessee.

If the amount for which such building, machinery or plant is sold (whether during the continuance of the business or after the cessation thereof) exceeds the written down value, so much of the excess as does not exceed the difference between the original cost and the written down value will be treated as profit of the previous year in which the sale took place. If the excess is more than the difference between the original cost and the written down value, the amount by which it is more is treated as capital profit.

The following example will illustrate how the 'balancing allowance' or 'balancing charge, is worked out:—

The original cost of a plant is Rs. 15,000, and its written down value is Rs. 10,000, Rs. 5,000, having been allowed as depreciation till the year of sale.

- (i) If the plant is sold for Rs. 8,000, a balancing allowance of Rs. 2,000 will be given to the assessee;
- (ii) If the plant is sold for Rs. 12,000, that is for Rs. 2,000 more than the written down value, Rs. 2,000 will be treated as profit of the previous year of the assessee and will be included in his taxable income, because it does not exceed the difference between the original cost and the written down value which is Rs. 5,000.
- (iii) If the plant is sold for Rs. 18,000, that is Rs. 8,000 more than the written down value, Rs. 5,000 will be treated as profit of the previous year and will be taxable as such, and the remaining Rs. 3,000 [Rs. 8,000—(Rs. 15,000—Rs. 10,000)] as capital profit, and, therefore, not taxable.

If any insurance, salvage or compensation moneys are received in respect of any such building, machinery or plant which has been discarded or demolished or destroyed the amount of balancing allowance will be—

Written down value minus (compensation received + scrap value of the asset).

If on the other hand the amount of the compensation and the value of the scrap exceed the written down value the difference will be the amount on which there will be a balancing charge but only to the extent by which the original cost exceeds the written down value, beyond which it will be treated as capital profit and therefore will not be taxable. The following illustration will make it clear.

	A	B	C	D
	Rs.	Rs.	Rs.	Rs.
Original cost	20 000	20,000	20,000	20,000
Written down value	12,000	12,000	12,000	12,000
Received from Ins. Co.	7,000	8,000	10,000	18,000
Value of the scrap	4,000	4,000	4 000	4,000
Balancing allowance	1,000	-	-	-
Balancing charge	-	-	2,000	8,000
Capital Profit	-	-	-	2,000

In the case of a building previously owned by the assessee and brought into use for the purposes of his business after 28th February, 1946, the written down value will be computed as already stated under clause (vi) above.

As in the case of other types of depreciation allowances, so also in the case of balancing depreciation only a proportionate amount will be allowed if the building, plant or machinery is not used wholly for the purposes of the business.

Balancing depreciation on the ground of discard will be allowed in the year in which the asset is actually put out of use. But if later on there is a further loss when the discarded asset is actually sold additional allowance can be granted.

An assessee deriving income from a railway or a tramway business may at his option claim in place of allowances for current repairs, depreciation and obsolescence [under section 10 (2) (v), (vi) and (vii)], the actual expenditure incurred by

him during the previous year on repairs, replacements and renewals of plant, machinery, buildings and furniture which are his own property. Option in this behalf once exercised cannot be changed without the consent of the Commissioner of Income-tax. The above does not apply to an electric tramway.

In the case of furniture and books the assessee, if he so desires, may claim the cost of replacement instead of depreciation.

(viii) *Dead or useless animals*—If the animals which have been used for the assessee's business during the accounting year, become permanently useless as such, they should be sold and the difference between the original cost thereof and the amount realized from their sale will be allowed. If such animals have died their original cost after deducting the amount realized from the sale proceeds of the carcasses, if any, will be allowed

(ix) *Taxes on business premises*—Any land revenue, local rates or municipal taxes paid by the assessee in respect of the premises used for the purposes of the business, profession or vocation. No allowance is given in respect of taxes levied on the basis of profits.

(x) *Bonus or commission to employees*—Any bonus or commission of reasonable amount paid to the employees, in respect of services rendered by them, provided such amount would not have been payable to them as profits or dividend if it had not been paid as bonus or commission. In order to determine the reasonableness of the amount the pay and conditions of service of the employees, the profits of the business during the year in question and the general practice in similar businesses will be taken into consideration.

(xi) *Bad and doubtful debts*—Bad debts are allowed only

if incidental to business, profession or vocation, otherwise they are treated as capital loss. The investments of savings or occasional loans made to acquaintances cannot be considered to be loans made in the due course of trading. Other conditions for allowing them are:—(i) that the accounts concerned of the assessee are kept on the mercantile system except in the case of a bank or a money-lender in whose case they may be kept even on cash basis. (ii) that the amount of bad debt is accepted by the Income-tax Officer as irrecoverable and has actually been written off in the books of accounts of the assessee. Amount transferred to a reserve for meeting bad debts which may arise in future is not allowed, (iii) that the amount ultimately recovered on a bad debt is treated as taxable income in the year of recovery.

(xii), (xiii) and (xiv): *Expenditure on scientific Research*
Scientific expenditure means any activities in the fields of natural or applied science for the extension of knowledge. The allowance is permissible to business only (and not to professions or vocations) and the expenditure is allowed even if it is of capital nature. Scientific expenditure is treated under three heads—

(a) *Expenditure, not being in the nature of capital expenditure, Clause (xii)* Any expenditure, irrespective of the amount, provided it is not of capital nature, and is actually spent in respect of the assessee's business against the profits of which the allowance is claimed.

(b) *Sums paid to scientific research association etc. clause (xiii)* Any sum paid to a scientific research association which undertakes research work related to the business of the assessee, or any sum paid to a university, college or other institution which will be used for such research work and when the university, college or institution is approved for the purpose.

(c) *Capital expenditure on scientific research—clause (xiv)*

The total expenditure under this head is allowed in five consecutive yearly instalments of equal sums commencing from the year in which the expenditure is incurred. Capital expenditure will be allowed even if it is incurred within three years (and not more) prior to the commencement of the business. In such a case the instalments will begin from the year in which the business begins functioning and will last for five years.

If the capital asset representing expenditure on scientific research ceases to be used for the purposes of scientific research related to the business—(i) no allowance will be made for any year after the year in which the cessation took place, and (ii) in the year of cessation in addition to the annual 1/5th of the cost the amount represented by the following will also be allowed:— total capital expenditure on that asset *Minus* (aggregate of the amounts allowed under clause (xiv) *Plus* value of the asset immediately before the cessation). If on the other hand the aggregate of the amounts allowed and the value of the asset immediately before the cessation is more than the capital expenditure on the asset the difference will be treated as profit liable to tax.

On the same principle if the capital asset is sold—(i) original cost of the capital asset *Minus* (aggregate of the amounts allowed *Plus* sale proceeds) will be allowed to be deducted from the profits, (ii) if the aggregate of the amounts allowed *Plus* the sale proceeds is more than the original cost of the capital asset, the difference will be treated as profit and will be taxable as such.

Depreciation allowance under clause (vi) or obsolescence allowance under clause. (vii) of this subsection will not be permissible in respect of the assets on which allowance under this clause is granted.

Although there is no express provision in any of the clauses (xii), (xiii) or (xiv) of this subsection, it is implied that if expenditure on a scientific research, or any part thereof, incurred by a person, is met by the government, or public, or a

oleal authority, that expenditure or that part of the expenditure shall not be regarded as incurred by that person.

(xv) *Miscellaneous Business Expenditure*: While a list of important allowances that are permissible in computing the profits and gains of a business, profession or vocation is given under the above 14 clauses still there are many others which have not been considered. On account of variety of their nature it is rather impossible to draw up an exhaustive and complete list of all the expenses which can, or cannot, be allowed. Instead of attempting to expand the list certain general principles have been laid down on the basis of which it may be decided whether a particular item of expenditure is a permissible allowance or not. For an expenditure to be allowed against the income of an assessee the following three conditions must be fulfilled:—

(1) that it is incurred for the purposes of the business, profession or vocation which is taxed;

(2) that it is incurred wholly and exclusively for the purposes of that business, profession or vocation;

(3) that it is not a capital expense or a personal expense of the assessee.

A loss which is incurred or suffered during the accounting period is allowed. Loss Expected in future cannot be allowed in the accounting period even though it is a certainty.

The following notes contained in the instructions issued by the Central Board of Revenue with regard to admissibility, or otherwise, of certain expenses may be illustrative and serve useful purpose for general guidance. They are, of course, not exhaustive:—

(a) Contributions to private provident funds by an employer are allowable if the fund is constituted as an irrevocable trust and if no part of the employer's contribution can be recovered by him. If the fund remains in the hands or under the

control of the employer, no contributions by him would be allowed as a deduction, but actual payments made to employees leaving the service would be allowed in the year in which such payments are made so far as such payments relate to the employer's contributions only.

(b) Contributions to private superannuation funds by an employer are also allowable, if the fund is constituted as an irrevocable trust and if no part of the employer's contribution can be recovered by him. If such a fund remains in the hands or under the control of the employer no contributions by him will be allowed as a deduction but actual payments of pension to ex-employees or to their widows or children should be allowed as a deduction when the pensionary payment is a fixed and recurring one. No claims on account of pensions will, however, be entertained when they are paid to persons who have, or who at any time had, a share or interest in the business, profession or vocation.

Contributions by an employer towards recognised Provident fund or superannuation fund maintained for the benefit of the employees are allowed to be deducted.

(c) Premia paid by an employer to cover the risk of liability to compensate any of his employees for injuries under the Workmen's Compensation or Accident Insurance Act (VIII of 1923) are allowable under section 10 (2) (xv).

(d) Bona fide expenditure of a revenue character for the welfare of employees is allowable, but in no case is any capital expenditure allowable.

If expenditure on labour welfare is made in any year out of reserves which have not previously been allowed as a deduction, such expenditure would be allowed as a deduction in the year in which it is incurred. Expenditure on labour welfare actually incurred would be allowed in its entirety as a deduction irrespective of the lowness of profits in any particular year. If such expenditure exceeds the profit of the year, it should be carried forward and set off in accordance with the provisions

of Section 24 of this Act.

(e) Indian traders and businessmen charge their customers or clients a small fee on each transaction, for example, so many pies per bag of some commodity sold, the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes. Such customary receipts and the corresponding expenditure should be left out of account altogether for income-tax purposes.

(f) Audit and other Accountancy expenses incurred annually, including expenses of settling the income-tax liability of an assessee will ordinarily be allowed. But expenses connected with subsequent proceedings before the higher authorities in appeal, review etc. will not be allowed.

The expenses of an appeal to the Appellate Assistant Commissioner or to the Income tax Appellate Tribunal against the application of Sec. 23A, will, however, be allowed if the company succeeds in establishing in appeal that the section should not have been applied in its case.

(g) Sales tax and expenses incurred in the original proceedings of assessment to Sales tax, as also in appeals arising from such proceedings, are allowable deductions. Expenses incurred in defence against proceedings for breach of law relating to Sales tax are not allowable as it is not any incident of business to commit breach of law.

(h) The premiums received by a company on issue of shares are capital receipts and the cost of issuing shares is capital expenditure.

By another circular of the Central Board of Revenue (No. 17 of 1943) an expenditure up to Rs. 200 is allowed in respect of 'Mahurat' ceremony, 'Deepawali utsava' or 'shubha divasa' for starting new accounts.

Other examples of admissible or inadmissible expenses are as follows :—

(1) Cost of shifting from one business premises to another, even though shifting may be compulsory, is a capital

expenditure. Expense incurred in selling fittings of the old shop and buying those for the new one is a capital expense and as such not allowable.

(2) Advertisement charges at the time of formation of a new business or over a special advertising campaign is a capital expense, but subsequent expense during the working of the business is a revenue expense.

(3) Fees of the lawyer to fight a case in respect of income-tax levy is not admissible, but expenses of settling the initial income-tax liability of the assessee is ordinarily allowed.

(4) Subscriptions paid to trade association are permissible allowance if the funds of the association are spent wholly or exclusively for the purposes of the trade.

(5) Premia for insuring buildings, machinery or plant against damage or destruction is allowed under clause (iv) above. Premium for any other kind of insurance would be allowed if it is wholly or exclusively for the purposes of the trade. Life insurance Premium in respect of an employee whose death may adversely affect the profits is allowed to be deducted. Premium on a policy to insure against loss of profit is allowed because sums recovered from insurance company against such policies are treated as taxable income.

(6) Compensation paid to employees purely on personal grounds is not allowed, but if their turning out is expedient and in the interests of the business it will be allowed.

(7) Presents or 'bakhshish' to employees is a permissible deduction provided it is not an act of charity or a result of obligation arising from the social or religious status of the assessee. They should be of the nature of perquisites though not legally claimable or they should be as a matter of convention or general practice in the particular line of trade.

(8) Losses by embezzlement or theft can be allowed only if it is in the course of business and is of circulating capital. Theft or loss by fire, water, white-ants etc., of stock-in-trade or embezzlement of cash by an employee is a revenue loss and

deductible as such. Loss of money by theft or dacoity or by embezzlement after business hours is a capital loss and therefore not allowable.

(9) Expenses incurred on defence of the proprietor or an employee of the business against criminal proceedings in a case which is not in respect of business, irrespective of the fact whether the case is won or lost, are not allowed, *e. g.* —

(a) defence of the editor and printer of a newspaper in a contempt case.

(b) defence of an employee of a firm of wine-merchants in a case of offence against Excise Act.

(c) defence of a partner in the firm in a black marketing and profiteering case.

(10) Fines imposed by Government for acts in defiance of law are not allowed to be deducted.

(11) Any loss on account of exchange fluctuations in respect of business transactions with foreign countries is allowed to be deducted.

(12) Compensation paid for breaking contract for purchase or sale of goods is allowed to be deducted. Compensation paid to agents for breaking agency agreement as a result of which a certain percentage of profits used to be paid to them every year is allowed as a permissible deduction.

(13) In addition to salaries and wages paid to employees as their remuneration, payment of gratuity or pension on retirement is allowed to be deducted even though there be no legal obligation of the employer to pay the same.

(14) Income of tea companies which grow and manufacture tea in the taxable territories, and of sugar companies which have their sugar cane farms also, is treated as partly from agriculture and partly from business. (Refer definition of agricultural income).

According to *Section 10 (3)* when the use of the building, machinery, plant or furniture, in the business, profession or

vocation is partial in reference to purpose, allowance under clause (iv) to (vii) of subsection (2) will be proportionate only.

Under *Section 10 (4)* Payments in respect of taxes on the profits of a business, profession or vocation are not admissible. Of course, rates and taxes payable independently of profits are allowed to be deducted. Thus income-tax (including foreign income-tax, if any) and super tax are not deductible. Excess-profits tax, if any, is allowed in computing profits for purposes of income-tax and super-tax. In the same way sales tax is also allowed.

Salaries payable outside the taxable territories are allowed only if tax on such salaries has been paid, or deducted at source or arrangement for its collection has been made. Payment in respect of Provident or such other fund is not allowed unless arrangement has been made for the deduction of tax from payments thereout, if the same are taxable under the head 'Salaries'.

Payments by way of interest, salary, commission or remuneration by a firm to any partner of the firm is not a deductible expense. All payments other than the above made to partners are allowed. Remuneration paid to a partner for services rendered to the firm in his individual capacity is allowed in the same way as to any outsider. If a partner is paid salary in view of certain qualifications possessed by him, such salary may be allowed provided it is irrespective of profits and is over and above his share of profit as partner.

Bona fide payment of salary by a Hindu Joint Family business to a member of the family, for services rendered to the business, is a deductible expense of the firm provided the sum is reasonable.

Under *sub section (5)* of this section 'expenses paid' means actually paid or incurred according to the method of accounting on the basis of which profits or gains of the assessee are computed. While computing the taxable income under this section care should be taken to see—

- (i) that all the income taxable under this section in

respect of the previous year has been brought into account and that no portion of it is left out under the guise of capital receipts or additional capital introduced by the assessee, or deposits received from friends, relations or members of the family, etc. etc.;

- (ii) that only those expenses which have been incurred in earning the profits or those losses which have been sustained in respect of the particular business and which are permissible deductions are charged against the income of the year; that no capital expense or no expense or loss which is not in respect of the particular business or particular accounting year is deducted from the income;
- (iii) that items of income not chargeable under this section are excluded but that they are charged under other appropriate section or sections. Portion of the income not chargeable to tax under this Act should be left out.

Under sub section (6) profits and gains of trade or professional associations which perform specific services for remuneration for their members are chargeable to tax under this section.

Profits and gains of the companies carrying on insurance business are not computed and charged to income-tax under the provisions of this section; they are computed and charged according to special rules framed for the purpose. (sub-sec. 7)

Illustrations

1 The Profit and Loss Account of Messrs. Narain Das Bhagwan Das contain, among other things, the following items on the expenditure side. You are required to explain, with reasons, whether for income-tax purposes they will be admissible or not.

- (a) Accountancy charges, including Rs. 1,000. paid
for drafting partnership deed

(b)	Money paid to save business reputation	4,000
(c)	Legal expenses of defending an employee against the charge of smuggling goods to Pakistan	2,000
(d)	Payment made two years before the commencement of business to Delhi University for starting a laboratory for scientific research relating to assessee's business	50 000
(e)	Expenses of a garden party held in honour of the new Minister of State for Economic Affairs.	3,000

Solution

(a) Fee for drafting partnership deed—Rs. 1,000—will not be allowed because it is a capital expenditure. Auditing and accountancy expenses incurred every year, including expenses of settling the income-tax liability of the assessee, are allowed as current items of expenditure.

(b) Rs. 4,000 spent to save business reputation will not be allowed because business reputation is a capital asset and, therefore, any expense to save it is not admissible.

(c) Legal expenses of defending employees prosecuted for offences against the law of the country are not permissible expenses and as such Rs. 2,000 spent on defending an employee against the charge of smuggling goods to Pakistan will not be allowed.

(d) Expenses incurred on scientific research before the commencement of business are allowed but only to the extent of one-fifth in one year, because it is allowed in five consecutive years beginning with the year in which the business is started. Only Rs. 10,000 will, therefore, be allowed this year.

(e) Rs. 3,000 spent on the garden-party in honour of the new Minister of State will not be allowed because it is not an expense incurred for business purposes.

(2) Messrs Rama Shanker Krishna Swarup, Cloth-merchants

prepared the following Profit and Loss Account for the year ended 31st March 1951:—

Profit and Loss Account

	Rs.		Rs.
To Mahurat Expenses	400	By Gross Profit	7,300
„ Advertising	3,000		
„ Sales Tax	1,000		
„ Bad debts Reserve	200		
„ Furniture and fittings	500		
„ Trade expenses	1,20		
„ Net Profit	1,000		
	<hr/>		<hr/>
Total	7,300	Total	7,300

Compute the taxable income of the firm.

Solution :

	Rs.
Gross Profit	7 300
	<hr/>
Less permissible expenses—	Rs.
Mahurat Expenses	200
Sales tax	1,000
Trade expenses	1,2 0
	<hr/>
Taxable income	2,400
	<hr/>

Note —(1) Only Rs. 200 are allowed in respect of Mahurat expenses.

(2) Expenses on advertising are presumed to be on special advertising campaign.

(3) Bad debts reserve is not permissible deduction.

(4) Expense on furniture and fittings is capital expenditure.

(3) Shri Radhey Lal, the proprietor of a flour mill, has prepared the following Profit and Loss Account for the year ending 31st March, 1951. You are required to compute his total taxable income and the amount of tax payable by him for the assessment of 1951-52. Also give reasons why you treat some of the expenses as inadmissible.

	Rs.		
Trade Expenses	450	Gross Profit	21,925
Establishment Charges	2,200	Bank Interest	475

Rent, Rates, and Taxes	1,400	Profit on Sale of In-	
Household Expenses	1,850	vestments	2,600
Discount and Allowances	200		
Income-tax	700		
Advertisement	450		
Postage and Telegrams	100		
Gifts and Presents	125		
Fire Insurance Premium	250		
Charities	375		
Subscriptions and Donations	400		
Repairs and Renewals	250		
Loss on sale of Motor-car	1,400		
Life Insurance Premium	850		
Reserve for Bad Debts	600		
Interest on Capital	150		
Audit Fee	250		
Net Profit transferred to			
Capital Account	13,000		
	25,000		25,000

Solution:*Assessment of Shri Radhey Lal for 1951-52*

Net profit as per Profit and Loss Account	Rs.	13,000
Add inadmissible expenses—	Rs.	
Household expenses	1,850	
Income-tax	700	
Gifts and presents	125	
Charities	375	
Subscriptions and donations	400	
Loss on sale of Motor-car	1,400	
Life insurance premium	850	
Reserve for Bad debts	600	
Interest on Capital	150	
		6,450
		19,450

Less profit on sale of investments (being capital profit).	2,600
Total income from business	16,850
Less earned income relief	3,370
Taxable income	<u>13,480</u>

Shri Radhey Lal has no other income.

His taxable income after allowing earned income relief is Rs. 13,480 and exempted income on which rebate shall be allowed is Rs. 850, life insurance premium.

Calculation of amount of tax payable by him—

Tax at 1951-52 rates on Rs. 13,480:

On first Rs. 1,500	nil	
On next Rs. 3,500 at 9 pies	Rs. 164- 1	
On next Rs. 5,000 at 1/9 pies	Rs. 546-14	
On next Rs. 3,480 at 3 annas	Rs. 562- 8	
On total Rs. 13,480	Rs. 1,363- 7	
Add 1 per cent. surcharge	68- 3	1,431-10

Average rate of tax 20.39 pies per rupee

Rebate on Rs. 850 (life insurance premium)

at the average rate of 20.39 pies 90-4

Tax payable 1,341-6

Notes—(1) Household expenses, Income-tax, reserve for bad debts and interest on capital are inadmissible expenses. Interest on capital is allowable if it is borrowed capital.

(2) It is presumed in this case that gifts and presents are voluntary payments. Gifts and presents given to employees as perquisites in return for services may, however, be allowed even though it may not be compulsory for the employer to do so.

(3) In order to claim exemption in respect of amounts given as charity the institutions to which charities are given must be approved by the Central Government.

(4) Subscriptions and donations paid by a business are admissible against its income only when either their payment is compulsory or it is commercially expedient and of benefit to the business. It is presumed otherwise in this case.

(5) It is presumed that motor-car is used for his personal benefit by Shri Radhey Lal and not for the purposes of the business.

It is presumed that life insurance premium is paid on the life policy of Shri Radhey Lal himself or on the life Policy of his wife. Premiums on the life policies of the employees whose death is likely to adversely affect the profits of the business can be claimed as deduction against business income.

(7) Bank interest of Rs. 475 on the credit side of the Profit and Loss Account is presumed to be on business account.

(4) From the following Profit and Loss Account of a merchant for the year ended March 31, 1951 find out his taxable income from business:—

	Rs.		Rs.
To Office Salaries ...	5,720	By Gross Profit ...	27,635
„ General Expenses ...	2,640	„ Interest on Govern-	
„ Interest:—	Rs.	ment Securities ...	1,460
On Bank Loan 480		„ Discount ...	365
On Capital ...	1,580	„ Bad Debts recovered	640
— — — —	2,060	„ Profit on sale of In-	
„ Fire Insurance Charges	775	vestments	750
„ Reserve for Bad Debts	835	„ Sundry receipts ...	350
„ Audit Fee ...	400		
„ Income-Tax ...	1,760		
„ Charity ...	485		
„ Law Charges ...	370		
„ Compensation paid to a			
retrenched employee	1,500		
„ Extension of Buildings	1,500		
„ Rent ...	1,155		
„ Net Profit ...	12,000		
Total ...	<u>31,200</u>	Total ...	<u>31,200</u>

In computing income, the following facts should be taken into consideration:—

(a) In the item of rent, Rs. 600 is included in respect of the rent of office building which belongs to the proprietor himself;

(b) In the amount of salaries, Rs. 320 is included in respect of employer's contribution to Provident Fund which is

recognized;

(c) General Expenses include Rs. 350 in respect of cost of new furniture purchased during the year:

(d) Amount of depreciation, allowable according to rules, on assets used for business purposes is worked out at Rs. 1,475; and

(e) Of the amount given in charity, Rs 300 was sent to the State of Jammu and Kashmir.

Solution :

		Rs.
Net Profit as per Profit and Loss Account		12,000
Add expenses not allowed—	Rs.	
1. Cost of new furniture	... 350	
2. Interest on Capital	... 1,580	
3. Reserve for Bad Debts	... 835	
4. Income Tax	... 1,760	
5. Charity	... 485	
6. Extension of Buildings	... 1,500	
7. Rent of office buildings	... 600	
(being the property of the proprietor of the business)		<u>7,110</u>
	Rs.	19,110
Less depreciation allowable	Rs.	<u>1,475</u>
	Rs.	17,635
Less income not chargeable under the head "income from business":—	Rs.	
1. Interest on Govt. Securities	1,460	
2. Profit on sale of investments	<u>750</u>	Rs. <u>2,210</u>
Taxable income from business		Rs. <u>15,425</u>

(5) Following is the Profit and Loss Account of the Krishna Tea Company Limited for the year ended 30th September, 1950 :

Profit and Loss Account:

	Rs.		Rs.
Opening stock of tea	10,000	Sale proceeds of tea	1,00,000

Tea-gardens and manufacturing expenses	40,000	Closing stock of tea	5,000
Inland freight	500		
Commission	200		
General Charges	1,000		
Audit fees	100		
Debenture interest	500		
Bonus to staff	2,500		
Contributions to unrecognised provident fund	700		
Depreciation	1,500		
Income-tax	7,000		
Net profit	40,200		
	<u>1,05,000</u>		<u>1,05,000</u>

Calculate taxable income of the company after taking following into consideration :—

1. Permissible depreciation according to prescribed rates is Rs. 1,000.
2. General charges include Rs. 100 given to Meerut Arya Samaj as donation.

Solution:

Profit as per Profit and Loss Account	Rs. 40,200
Add inadmissible expenses—	
Donation to Meerut Arya Samaj 100	
Contribution to unrecognised provident fund (considered inadmissible) 700	
Depreciation in excess of permissible amount 300	
Income tax <u>7,000</u>	<u>8,100</u>
Total income of the company	Rs. 48,300

In the case of tea companies only 40 per cent. of their income is taxable, the remaining 60 per cent. being considered as agricultural income.

The taxable income of the company, therefore, is 40 per cent. of Rs. 48,300, *viz.* Rs. 19,320. *

(6) The following is the Manufacturing and Profit and Loss Account of a sugar mill company for the year ending 31st October, 1947:—

	Rs.		Rs.
Opening Stock	1 82,300	Sales	24,51,500
Cost of Cane crushed	12 57,700	Miscellaneous	
Manufacturing Expenses	7,98,500	Receipts	6,700
Repairs and Renewals	40,700	Closing Stock	3,66,000
Establishment Charges	41,600		
Miscellaneous Expenses	17,800		
Commission on Sales etc.	63,500		
Directors' Fees	1,600		
Auditors' Fees	2,000		
Managing Agents' Allowance			
and Commission	78,600		
Depreciation written off	1,30,700		
Balance being Profit			
carried down	2,09,200		
	<u>28,24,200</u>		<u>28,24,200</u>
Amounts transferred—		Profit b/d	2,09,200
To Reserve Fund	25,000		
To Reserve for			
Income-tax	90,000		
	<u>1,15,000</u>		
Balance carried to			
Balance Sheet	94,200		
Total	<u>2,09,200</u>	Total	<u>2,09,200</u>

	Rs.
Profit as per Profit and Loss Account	2,09,200
Add cost of growing sugar-cane on company's own farm, charged to Profit and Loss a/c	1,54,000
Less market value of sugar-cane grown on company's own farm and used in the mill	3,63,200 19,000
Add expenses disallowed :—	1,67,200
4/5ths of Rs. 67,000, cap. expenditure on scientific research	53,600
Contributions towards unrecognized Provident Fund	3,200
Donations to local educational institutions	5,000
Cost of sugar distributed free	1,000
Cost of additions to factory buildings (cap. expenditure)	15,000
Depreciation	1,30,700
	<hr/> 3,75,700
Less depreciation allowed as per rules	98,200

Taxable income of the company Rs. 2,77,500

(7) Given below is the Profit and Loss Account of the Bhatia Cotton Mill Co., Ltd., for the year ended 31st December, 1941 :—

	Rs.		Rs.
Stocks on 1st Jan. '41	17,82,105	Sales	61,90,397
Cotton consumed	25,83,685	Rents of Staff	
Manufacturing Expenses	9,45,395	Quarters	25,362
Wages and salaries	8,65,972	Stock on 31st Dec.	
Marketing	61,215	1941	13,59,410
Insurance	27,156		
Establishment	2,79,762		
Welfare Expenses	17,825		
Balance c/d	10,12,054		
	<hr/> 75,75,169		<hr/> 75,75 69

Directors' Fees	2,500	Balance b/d	10,12,054
Auditors' Fees	1,500	Transfer Fees	1,500
Law Charges	3,250		
Interest	1,05,250		
Repairs to Buildings and Machinery	15 640		
General Charges	25,875		
Managing Agents' Remu- neration	60 420		
Contribution to War Purposes Fund	10 000		
Contribution to Staff Provident Fund	20 000		
Debenture Sinking Fund	25,000		
General Reserve	1,00,000		
Taxation Reserve	3 000,00		
Balance (Subject to depreciation)	3,44,119		
	<hr/> 10 13 554 <hr/>		<hr/> 10,13,554 <hr/>

You are required to compute the Company's taxable income from business and also its total income for the year 1941, after taking the following information into account :—

(a) Welfare Expenses include Rs. 825, the cost of a pucca well built for the use of the Company's workmen.

(b) Insurance Rs. 1,000, Repairs Rs. 3 750, and Municipal tax Rs. 2 150 (included in General Charges) were in respect of Staff Quarters.

(c) Law Charges amounting to Rs. 1,500 were incurred in connection with additional land purchased during the year.

(d) The Staff Provident Fund is a recognized one.

(e) The amount of depreciation allowable is Rs. 2,64,325.

Solution:*Statement of Income from business :*

		Rs.
Profit as per Profit and Loss account		3,44,119
Add expenses not allowed—		
Cost of pucca well	825	
In respect of Staff quarters:		
Insurance	1000	
Repairs	3750	
Municipal tax	2150	
		6,900
Law charges in connection with		
land purchased during the year	1,500	
Contribution to War Purposes Fund	10,000	
Debenture Sinking Fund	25,000	
General Reserve	1,00,000	
Taxation Reserve	3,00,000	4,44,225
		7 88,344
Less Depreciation allowable	2,64,325	
Rent of Staff quarters	25,362	2,89,687
Income from business		4,98,657

Statement of Income from Property

Rent of Staff quarters		25,362	
Less (i) $\frac{1}{2}$ for repairs	4227		
(ii) Insurance Premium	1000	5,227	20,135

Statement of Total Income:

Income from business	Rs.	4,98,657
Income from Property		20,135
Total Income	Rs.	5,18,792

Note:—Any sums paid after the first day of April 1948 as donations to any institution or fund which is established in the taxable territories for a charitable purpose and is approved by the Central Government is exempted from payment of tax with certain limitations. No such exemption was allowed in the year 1941.

(8) The following is the Profit and Loss Account of Mr. Jamshedji for the year ending 31st March, 1950 :—

	Rs.		Rs.
Salaries	40,000	Gross Profit	5,00,000
Allowances to widows of deceased employees	3,000	Profit on Sale of Machinery	5,000
Postage and Telegrams	1,000		
Secret Commission	10,000		
Donation to Red Cross Fund	1,000		
Rent	6,000		
Staff Provident Fund Contribution	5,000		
Loss on Sale of Investments	1,00,000		
Interest on Capital	5,000		
Net Profit	3,70,000		
	<hr/>		
Total	5,50,000	Total	5,50,000

(a) The original cost of machinery sold during the year was Rs. 1,00,000 and depreciation allowed for income-tax purposes to date was Rs. 30,000.

(b) Mr. and Mrs. Jamshedji have a partnership business in which the assessable profit for 1950-51 assessment works out at Rs. 60,000 as a registered firm. The whole capital of the firm has been contributed by Mr. Jamshedji. The two partners share profits equally.

(c) Mr. Jamshedji has made a revocable deed of settlement, the income from which for the assessment year 1950-51 is determined at Rs. 10,000 from dividends. Under the settlement the whole income is to go to Mrs. Jamshedji for her life.

(d) Mr. Jamshedji has made another revocable deed of settlement whose income for the assessment year 1950-51 works out at Rs. 15,000 from dividends. Under this settlement the whole income is to be enjoyed by the three children of the

settlor, all of whom are minors.

Prepare the respective tax liabilities of Mr. and Mrs. Jamshedji and the trustees for the minor children for the assessment year 1950-51.

Solution

Taxable income from Jamshedji's business:

Net profit as per P & L Account	...	Rs. 3,70,000
Add Expenses not admissible:—		
1. Secret Commission	10,000	
2. Donation to Red Cross Fund	10,000	
3. Loss on sale of Investments	1,00,000	
4. Interest on Capital	<u>5,000</u>	<u>1,25,000</u>
		4,95,000
Less profit on sale of machinery being		
Capital Gain		<u>20,000</u>
	Rs.	<u>4,75,000</u>

Note—Of Rs. 50,000, profit on sale of machinery, Rs. 30,000 (to the extent to which depreciation allowance on this asset has been granted) will be treated as normal profit and will be taxed as such and the balance of Rs. 20,000 will be treated as Capital profit.

Another method of dealing with this is—

Written down value of the asset	Rs.	70,000
Profit on sale of above	Rs.	<u>50,000</u>
Therefore selling price must be	Rs.	1,20,000
Cost price of this asset is	Rs.	<u>1,00,000</u>
Therefore capital profit on sale		
of machinery	Rs.	<u>20,000</u>

Assessment of Jamshedji for 1951-52:

1. Income from business—	...	Rs. 4,75,000
Profit of registered firm		<u>60,000</u>
(the whole amount is treated as		
Jamshedji's profit)		5,35,000
2. Income from settlements	Rs. 10,000	
	+Rs. 15,000	25,000

Total Income	...	5,60,000
Less Earned Income Allowance		<u>4,000</u>
Taxable Income	...	<u>5,56,000</u>

Exempted Income—

Donation to Red Cross Fund Rs. 10,000

Mr. Jamshedji is liable to tax (income-tax and super-tax) on Rs. 5,46,000, at the average rates of tax applicable to an income of Rs. 5,56,000.

Income of the settlements made in favour of wife and minor children is income of Mr. Jamshedji. Share of profit of wife in registered firm also is income of Jamshedji. Mrs. Jamshedji and the three minor children are, therefore, not liable to any tax.

SECTION 12

OTHER SOURCES

(1) Tax shall be payable by an assessee under the head "Income from other sources" in respect of income, profits and gains of every kind which may be included in his total income (if not included under any of the preceding heads).

(2) Such Income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of—

(a) any personal expenses of the assessee, or

(b) any interest chargeable under this Act which is payable without the taxable territories not being interest on a loan issued for public subscription before the first day of April, 1938, or not being interest on which tax has been paid or from which tax has been deducted under section 18, or

(c) any payment which is chargeable under the head 'salaries' if it is payable without the taxable territories and tax has not been paid thereon nor deducted therefrom under section 18.

(3) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowance in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 10.

(4) Where an assessee lets on hire machinery, plant or furniture, belonging to him and also buildings, and

the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the provisions of clauses (v), (vi) and (vii) of sub-section (2) of section 10 in respect of such buildings.

Section 12 provides a residuary group of incomes, in which is included every kind of income, from whatever source derived, which is taxable under the income-tax Act and which is not covered by any of the sections 7, 8, 9 or 10. From the net of this section no income can escape unless it is expressly exempted.

There can be a number of instances of income falling in this group—those which are of the nature of remuneration for services rendered but are not governed by section 7, those which are of the nature of interest or dividend but are not covered by section 8, those which are of the nature of property income but not taxable under section 9 or those which are of the nature of income from business, profession or vocation but do not come under section 10. Some of the instances of such income are as follows :—

1. Remuneration received by a professor for acting as an examiner, commission received by an employee but not from his employer, commission received by a director of a company for underwriting shares of a new company.

2. Interest on bank deposits or loans of foreign Governments, dividend on shares of companies or interest on debentures of clubs, firms etc.

3. Income derived from sub-letting of property, letting of open lands in urban areas, rent or royalty for granting permission to erect brick kilns or rents of temporary shops on market days.

4. Share of profit from a partnership firm, profit of an isolated transaction unless exempt as casual income, etc.

5. Income of royalties from mining or arising from sale of patents or copyright.

Such expenses as are incurred solely for the purpose of making or earning such income, profits or gains are allowed in computing income under this section. Those expenses which are disallowed in computing taxable income under section 10 are disallowed under this section also.

Against the income from letting of machinery, plant or furniture belonging to the assessee allowances shall be granted according to the provisions of clauses (iv), (v), (vi) and (vii) of section 10 (2). If building is also let along with machinery, plant or furniture (and the letting of building is inseparable from the letting of the said machinery, plant or furniture) allowances in respect of building will be permissible in accordance with the provisions of clauses (v) (vi) and (vii) of section 10 (2).

Income-tax on dividends :—Although a company belongs to the shareholders it enjoys a legal status of its own, quite distinct from that of its members. As such the company is required to pay tax on its profits and when the same profits reach the shareholders in the form of dividend, the amount of dividend (after being grossed up) is included in the total income of the share-holder for the purpose of his personal assessment. The dividend income is not excluded from his assessment on the ground that it has already been subjected to tax in the hands of the company. In this way for the purpose of taxation the same income is taken into account twice—once in the hands of the company and again for the second time in the hands of the share holder. In order to avoid double taxation of the same income section 49B of the Income-tax Act provides that if the dividend income is included in the total income of the share-holder, the shareholder shall be deemed himself to have paid income tax in respect thereof. Therefore, while on the one hand income from dividend (after being grossed up) will be included in the total income in the individual assessment of the shareholder, on the other hand credit will be given to him of the proportionate amount of tax which the company might have

paid on its total profit out of which dividend is paid. If the proportionate amount of tax on the dividend of a shareholder works out to be more than the income-tax payable by him on his individual assessment, or if no tax is due from, and payable by, him in respect of his assessment, he will be entitled to a refund under section 48.

The above applies with regard to income-tax only and not to super-tax, because super-tax paid by a company is a corporation tax charged from it in lieu of special privileges (that of corporate finance and limited liability) granted to it. Therefore the benefit of super tax or corporation tax paid by the company is not granted to a shareholder in his individual assessment. He is required to pay super-tax on his share of dividend over and above what the company has already paid on it. It is for the purpose of super-tax, therefore, that the definition of dividend is important and should be carefully studied and understood as given in section 2 (6A).

Grossing up of dividends:—The amount of dividend in the hands of a shareholder is a receipt not out of the taxable profit of the company but out of the balance of taxable profit left after payment of tax. Therefore, dividend received by him is equal to his share in the company's total income *Minus* proportionate amount of tax thereon. In order to find out the shareholder's share of company's profits to be included in his total income the amount of dividend received by him should be grossed up and the difference between the grossed up amount and the dividend actually received by him would represent the amount of tax paid by the company on his behalf, and of which he shall get credit in his individual assessment. The rate at which dividend shall be grossed up shall not be that of the financial year in which the corresponding profits of the company are assessed but that of the financial year in which the dividend is paid, credited or distributed.

The entire dividend receipt of a shareholder (except a dividend received out of capital profits) is taxed in his hands

even though the profits of the company may be derived partly or wholly from non taxable sources. If the profits of the company are taxable only partly the notional tax addition to the amount of dividend will also be partial, and the credit that he will receive of the income-tax paid by the company will be of the proportionate amount. The question of grossing up would not arise if the company's profits are wholly from non-taxable sources because no tax has been paid by the company. There is of course one exception to this rule. Section 15 C of the Income-tax Act provides as follows :—

“(1) Save as otherwise hereinafter provided, the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed 6 per cent. per annum on the capital employed in the undertaking, computed.....”

According to the above provision a shareholder is not to pay income-tax in respect of so much of the dividend paid to him by a new industrial concern as is attributable to its exempted profits.

Following formulae may be employed for grossing up dividend received by a shareholder from a company taxed in the taxable territories :—

(a) When the profits of the company are wholly taxable.

$$\text{Net dividend} \times \frac{1}{1 - \frac{R}{192}}$$

‘R’ representing the rate in pies at which the company's profits have been taxed.

(b) When the profits of the company are taxable only partly—

$$\text{Net dividend} \times \frac{1}{1 - \left(\frac{X}{100} \times \frac{R}{192} \right)}$$

'X' representing the per centage of the company's profits which has borne income-tax and 'R' representing the rate in pies at which the company's profits have been taxed.

Illustration (1)

- (i) Amount of net dividend received Rs. 1,200.
- (ii) Profits of the company wholly taxable.
- (iii) Rate of income-tax on company's profits—48 pies per rupee.

Grossed up amount=

$$\text{Rs. } 1,200 \times \frac{1}{1 - \frac{48}{100}} = \text{Rs. } 1,600$$

$$\text{Amount of income tax} = \text{Rs. } 1,600 - \text{Rs. } 1,200 = \text{Rs. } 400.$$

Illustration (2)

- (i) Amount of net dividend received Rs. 1,200
- (ii) Profit of the company taxable to the extent of 40 per cent. only.
- (iii) Rate of income-tax on company's profits—48 pies per rupee.

Grossed up amount=

$$\text{Rs. } 1,200 \times \frac{1}{1 - \left(\frac{40}{100} \times \frac{48}{100} \right)} = \text{Rs. } 1,333$$

$$\text{Amount income-tax} = \text{Rs. } 1,333 - 1,200 = \text{Rs. } 133.$$

Dividend declared by a company on its shares is either 'free of tax' or 'less tax'. There should be no misunderstanding about these two terms with regard to payment of income tax on its profits by the company. In either case income-tax on company's profits should have been paid, or will be paid, provided the profits are derived from taxable sources. These two terms refer only whether the shareholder is paid full rate of dividend declared by the company or from the rate declared tax is further deducted. For the purpose of grossing up of dividend it may be remembered that *the actual amount of dividend received by the shareholder must be grossed up irrespective*

of the fact whether payment is on the basis of 'free of tax' or 'less tax'.

The following examples will illustrate the above:—

(a) A received Rs. 300 as dividend,

or

A received Rs. 300 as tax-free dividend,

or

A received Rs. 300 as dividend after deduction of tax therefrom.

In each one of the above three cases the sum of Rs. 300, actually received by the shareholder, shall have to be grossed up.

(b) A received 5% free of tax dividend on 60 shares held by him.

The actual amount of dividend received by A is Rs. 300 and, therefore, Rs. 300, will have to be grossed up.

(c) A received 5%, less tax, dividend on 60 shares held by him.

The actual amount of dividend received by A is Rs. 300 less Rs. 75, income-tax @ 4 annas per rupee, deducted therefrom, viz. Rs. 225. Rs. 225 is the actual amount of dividend received and therefore should be grossed up. Or alternatively Rs. 300 is already the gross amount of dividend and should not further be grossed up.

When a company declares 'less tax' dividend the amount of tax deducted from the dividend is not to be paid to the Government, because so far as the Government is concerned income tax has already been paid as calculated on the total profits of the company. In the accounts of the company such deductions are credited in the Income-tax Account and go to reduce the amount on its debit side representing the amount of tax paid to the government. This means out of the tax paid by the company so much is recouped from the shareholders. Super-tax on dividends paid to non residents is deducted at source by the company and paid into the Government treasury on behalf of the shareholder, the rate of tax for calculating the deduction being the rate as fixed by the Income-tax Officer in each

such case. In the absence of any such direction from the Income-tax Officer the rate should be the one applicable to the total amount of dividend payable to each shareholder.

In order that the shareholder may be able to claim credit in his own assessment of the proportionate amount of income-tax paid by the company (as much as is applicable to his share of dividend), every company is required to give to its shareholders certificates to the effect that the profits of the company out of which dividend is paid, have been, or will be, assessed to income-tax. When in the case of a non-resident the company deducts super-tax from his dividend the company should give a certificate to the non-resident shareholder that so much amount of super-tax has been deducted.

SECTION 12A

MANAGING AGENCY COMMISSION

Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

Such a case arises when the managing agents of a company themselves are unable to undertake and carry out the entire responsibilities of the agency, and, therefore, make an agreement with a third party for help in the form of money, services, etc. and in consideration thereof agree to part with a share of the commission. This section specially provides that managing agents can deduct in computing their income the share of the commission which they pay to other parties, although on the grounds of general principles of income-tax such a deduction is not permissible because it is a payment of share of profits and not an expenditure incurred on earning of profits. By this section a method is provided according to which each party sharing in the managing agency commission may be charged on his share of commission. In order to claim separate assessments on their individual shares an agreement for adequate consideration between the parties must exist.

SECTION 12B

CAPITAL GAINS

(1) The tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of March 1946, and before the 1st day of April 1948, and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or transfer took place :

Provided that where the amount of capital gains in the previous year does not exceed fifteen thousand rupees, the tax shall not be payable by the assessee and such amount shall not be included in his total income:

Provided further that the tax shall not be payable by an assessee in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset, being property the income of which is chargeable under Section 9 and which has been possessed by the assessee or a parent of his for not less than seven years before the date on which the sale, exchange or transfer took place; and the amount of such profits or gains shall not be included in his total income :

Provided further that any transfer of capital assets by reason of the compulsory acquisition thereof under any law for the time being in force relating to the compulsory acquisition of property for public purposes or any distribution of capital assets on the total or partial partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons, or on the liquidation of a

company, or under a deed of gift, bequest, will or transfer on irrevocable trust shall not, for the purposes of this section, be treated as sale, exchange or transfer of the capital assets :

Provided further that the transfer of a capital asset by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange or transfer within the meaning of this section where the subsidiary company is resident in the taxable territories and is registered under the Indian Companies Act 1913, so however that for the purposes of clause (vi) or clause (vii) of sub-section (2) of section 10, the cost or the written down value, as the case may be, of the transferred capital asset shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

(2) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made, namely—

- (i) expenditure incurred solely in connection with such sale, exchange or transfer;
- (ii) the actual cost to the assessee of the capital asset, including any expenditure of a capital nature incurred and borne by him in making any additions or alterations thereto, but excluding any expenditure in respect of which any allowance is admissible under any provision of section 8, 9, 10 and 12;

Provided that where a person who acquires a capital asset from the assessee whether by sale, exchange

or transfer is a person with whom the assessee is directly or indirectly connected and the Income-tax Officer has reason to believe that the sale, exchange or transfer was effected with the object of avoidance or reduction of the liability of the assessee under this section, the full value of the consideration for which the sale, exchange or transfer is made shall, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, be taken to be the fair market value of the capital asset on the date on which the sale, exchange or transfer took place.

Provided further that where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its written down value as defined in Section 10, increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of that section :

Provided further that where the capital asset became the property of the assessee or of the previous owner where the cost of the capital asset to the previous owner is to be taken in accordance with subsection (3) before the 1st day of January, 1939, he may, on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount of depreciation, if any, allowed to the assessee after the said date and increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of section 10:

Provided further that where the capital asset was

on any previous occasion the subject of negotiations for its sale, exchange or transfer, any option or other money received and retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost to him of such asset.

(3) Where any capital asset became the property of the assessee by succession, inheritance or devolution or under any of the circumstances referred to in the third proviso to subsection (1), its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of subsection (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof.

Provided that where the capital asset became the property of the assessee—

- (i) before the 1st day of April, 1947, under a deed of gift or on the partition of a Hindu undivided family, the actual cost allowable to him shall be the fair market value of the capital asset on the date of the gift or the date of the partition, as the case may be, if such value is greater than the actual cost to the previous owner or the fair market value thereof on the 1st day of January, 1939, where the third proviso to subsection (2) applies;
- (ii) on or after 1st day of April, 1947, on the partition of Hindu undivided family, the cost allowable to him shall be the fair market value on the date of the partition.

(4) Notwithstanding any thing contained in sub-section (1), where a capital gain arises from the sale, exchange or transfer of a capital asset which immediately before the date on which the sale, exchange or transfer took place was being used by the assessee for the purposes of his business, profession or vocation, or which in the two years immediately preceding that date was being used by him or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased a new capital asset for the same purposes of his business, profession or vocation or, as the case may be, for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange or transfer took place, it shall, if the assessee so elects in writing before the assessment is made, be dealt with in accordance with the following provisions of this sub-section, that is to say,—

(a) if the amount of the capital gain is greater than the cost of the new asset,—

- (i) the difference between the amount of the capital gain and the cost of the new asset shall be charged under this section as income of the previous year, and
- (ii) for the purposes of computing in respect of the new asset any allowance under clause (vi) or clause (vii) of sub-section (2) of section 10 or the amount of any capital gain arising from its sale, exchange or transfer, the cost or the written down value, as the case may be, shall be nil, or

(b) if the amount of the capital gain is equal to or less than the cost of the new asset,

- (i) the capital gain shall not be charged under this section, and
- (ii) for the purposes of computing in respect of the new asset any allowance under the said clause (vi) or any allowance or adjustment under the said clause (vii) or the amount of any capital gain arising from its sale, exchange or transfer the cost or the written down value, as the case may be, shall be reduced by the amount of the capital gain:

Provided that where in respect of the purchase of a new capital asset consisting of plant or machinery the assessee satisfies the Income-tax Officer that despite the exercise of due diligence it has not been possible to make the purchase within the period specified in this subsection, the Income-tax Officer may, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, extend the said period to such date as he considers reasonable.

Capital Gains tax came into existence on 31st March, 1947, and remained in force for two years only—1947-48 and 1948-49. Capital gains derived from 1st April 1946 to 31st March, 1947, were taken into consideration for the assessments of 1947-48 and those derived from 1st April 1947 to 31st March 1948 were assessed in 1948-49. Capital gains derived after 31st March 1948 are not taxable; or in other words with effect from the assessment of 1949-50 capital gains of the previous year are not to be taken into account.

Under the head "Capital gains" an assessee is required to pay tax in respect of any profit or gain arising from the sale, exchange or transfer of a capital asset effected after 31st March

1946 and before 1st April 1948. Mere rise in the value of a capital asset (without sale, exchange or transfer) does not attract tax liability. According to section 2 (4A) capital asset means property of any kind held by an assessee, whether or not connected with his business profession or vocation, but does not include—

- (i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation;
- (ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;
- (iii) any land from which the income derived is agricultural income.

Profits or gains on transfer, sale or exchange of capital assets in the following cases will not attract tax liability :—

- (i) Sale, exchange or transfer of property the income of which is chargeable under Section 9 and which has been possessed by the assessee or his parents for not less than 7 years before the date on which sale, exchange or transfer took place;
- (ii) Transfer by compulsory acquisition for public purpose;
- (iii) transfer by distribution of capital assets on partition of Hindu undivided family, or dissolution of a firm, or on the liquidation of a company.
- (iv) transfer under a deed of gift, bequest, will etc.
- (v) transfer of a capital asset by a company to its subsidiary company which is registered under the Indian Companies Act and is resident in the taxable territories.

As per the provisions of sub-section (6) of Section 17 of the Income-tax Act, where the total income of an assessee includes income chargeable under the head 'Capital gains' the

tax including super-tax payable by him on his total income shall be computed as follows :—

The total income shall be divided into two parts :—

- (a) Income other than the capital gains;
- (b) Capital gains.

On income other than the capital gains income-tax and super tax will be calculated at the rates applicable to this amount of income. On capital gains income-tax will be calculated at the following rates :—

Where the amount of capital gain	Rate
(a) exceeds Rs. 15,000 but does not exceed Rs. 50,000	one anna in the rupee
(b) exceeds Rs. 50,000 but does not exceed Rs. 2,00,000	two annas in the rupee
(c) exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000	three annas in the rupee
(d) exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	four annas in the rupee
(e) exceeds Rs. 10,00,000	five annas in the rupee.

Provision of marginal relief is made as follows :—

Where owing to the fact that the amount of capital gains exceeds a certain limit, tax thereon becomes payable or becomes payable at a higher rate, the amount of tax so payable shall be reduced so as not to exceed—

- (a) the amount which would have been payable if the amount of such capital gain had not exceeded that limit, plus
- (b) one half of the amount by which the amount of such capital gain exceeds that limit,

For example—

- (i) if the capital gain of an assessee is Rs. 12,000 no tax will be payable on it;
- (ii) if the capital gain is Rs. 16,000, the tax payable will be Rs. 500, half the amount of Rs. 1,000 (Rs. 16,000 minus Rs. 15,000, the amount up to which capital

gains tax is not payable). At the rate of one anna in the rupee tax on Rs. 16,000 comes to be Rs. 1,000.

(iii) if the capital gain is Rs. 20,000 the tax payable will be Rs. 1,250, worked out at the rate of one anna in the rupee on Rs. 20,000.

(iv) if the capital gain is Rs. 52,000, the tax will be:—

On Rs. 50,000 at one anna in the rupee = Rs. 3,125

On Rs. 2,000—half the amount of it = Rs. 1,000 —

Total — Rs. 4,125

and not Rs. 6,500—at the rate of two annas in the rupee on Rs. 52,000.

Super-tax is not chargeable on the capital gains of the assessee other than companies. In the case of a company super-tax payable by it shall be reduced by an amount computed on that part of his total income which consists of capital gains at the rate of super tax (excluding the rate of additional super-tax, if any) specified in the case of a company by the annual Act of the Central Legislature fixing the rate or rates of tax for that year.

SECTION 13

METHOD OF ACCOUNTING

Income, profits and gains shall be computed, for the purposes of sections 10 and 12, in accordance with the method of accounting regularly employed by the assessee.

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer determines.

This Section refers to maintenance of accounts for the purpose of computation of income, profits and gains under sections 10 and 12 and does not apply to income under sections 7, 8 and 9. In respect of sections 10 and 12 it is mandatory. If the assessee regularly employs a method of accounting from which his income, for a fixed period, can be accurately ascertained, his income for the purpose of assessment shall be computed on the basis of those accounts. What method of accounting the assessee follows it is for him to decide in accordance with the nature of his business and his own convenience. Income tax law does not lay down any uniform method of accounting to be followed by all the assessees.

If the assessee does not regularly follow the same method of accounting, or if the method of accounting followed by him is one from which income, profits or gains of the assessee cannot properly be deduced, the Income-tax Officer shall himself determine the basis and the manner for the computation of his income. On the other hand the Income-tax Officer should not reject genuine accounts merely on the ground that they are

complicated.

An assessee can change from one system of accounting to another, if he so desires, only after taking permission of the Income-tax Officer. While considering an application for change the Income tax Officer has to see that the change is in good faith and by allowing it no portion of the assessee's income will escape tax.

Broadly speaking there are two methods of account keeping

1. *Cash system* — Under this system a transaction is recorded in the books of accounts only when cash is actually received or paid in respect thereof; until cash is actually received or paid no record of the transaction is made, *e. g.* when furniture is bought on credit no record is made either in the furniture account or in the account of the firm from whom it is bought. Later on when cash is paid to the firm the furniture account is debited and the cash account is credited. The same method is followed in respect of other credit transactions. Under this method of accounting, therefore, the correct amount of profit or loss of a business, during a particular period, cannot be found out because profit or loss on a transaction actually occurs when the transaction takes place and not when cash in respect thereof is received or paid. Cash system, therefore cannot be suitable for most of the concerns because usually their business is on credit basis.

This method, of course, can easily be adopted in the case of professional men like doctors, accountants and lawyers whose dealings are mostly on cash basis, or by non-trading concerns like clubs, societies and educational and charitable institutions who make efforts to see that at the close of their accounting period their outstandings are the least. Some small traders whose terms are exclusively, or mostly, 'cash' may adopt this system without much difficulty. But in their case while calculating the amount of profit care should be taken to take into consideration the difference between the value of opening and

closing stock, otherwise the result obtained will not be correct.

2. *Mercantile system*.—also known as 'book profit system'. Under this system a transaction, whether cash or credit, is recorded in the books of accounts immediately it takes place and the result of all such transactions is reflected in the profit and loss account of the period irrespective of the fact whether cash in respect of them has actually been received or paid or not. Under such a system correct amount of profit of a business during a particular period can be ascertained.

In-between the above two methods there is a third method also—the '*Hybrid system of accounting*'. This is partly cash and partly mercantile system. Under this system one set of transactions are recorded according to cash system and another set according to mercantile system. A large number of small traders keep their accounts by this system and record all their transactions by cash system except those affecting personal accounts, in which case mercantile system is followed.

Valuation of stock.—According to sound commercial policy, closing stock, for the purpose of preparing Profit and Loss Account and Balance Sheet, is valued at market price, if it is lower than the cost price. By doing so provision is made for an apprehended loss on account of fall in the market price of the stock, or in other words an unrealized and unsuffered loss is provided against the income of the current year. While this is allright according to accountancy principles it is against the general rule of income tax law. In order that the trader may be able to distribute his loss more evenly this departure is, however, allowed. On the other hand if the market price of the stock has gone up, the trader is not required by the 'income-tax law to value his stock at the higher price and thus bring into account anticipated and unrealized profits.

SECTION 14

EXEMPTIONS OF A GENERAL NATURE

(1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family where such sum has been paid out of the income of the family or in the case of an impartible estate where such sum has been paid out of the income of the holder of the estate belonging to the family.

(2) The tax shall not be payable by an assessee—

(a) If a partner of an unregistered firm, in respect of any portion of his share in the profit and gains of the firm computed in the manner laid down in clause (b) of sub-section (1) of section 16 on which the tax has already been paid by the firm; or

(b) If a member of an association of persons other than a Hindu undivided family, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association; or

(c) In respect of any income, profits or gains accruing or arising to him within a Part B State, unless such income, profits or gains are received or deemed to be received in or are brought into the taxable territory in the previous year by or on behalf of the assessee, or assessable under section 12 B or section 42.

(1) Following income is totally exempt from payment of income-tax (and also super-tax, by virtue of section 58). It is absolutely ignored and is not included in total income even for the purpose of rate:—

(a) Share of income received by a member of a Hindu undivided family out of the income of the family irrespective of the fact whether the family income out of which it is received has been taxed in the hands of the 'Karta' of the family or not.

(b) Share received by a member out of the income of the holder of an impartible estate belonging to the family.

(2) The following income is exempted from payment of income tax (and not super-tax but is included in the total income of the assessee :—

(a) Share of a partner in the profits of an unregistered firm which has already paid tax thereon.

(b) Share of a member in the income of an association (other than a Hindu undivided family, company or firm) which has already paid tax thereon.

The object of above exemptions is to provide relief from double taxation. When the profits of a firm or the income of an association has been taxed the individual members of the firm or the association should not be taxed on the amounts received by them out of such taxed profits.

Illustration :

(a) Taxable income from business and property of Mr. X is Rs. 13,800. He received Rs. 2,400 as his share of income of Hindu undivided family of which he is a member. The income of the family has been taxed in the hands of the manager of the family.

For his individual assessment the total income of X will be Rs. 13,800 on which he will be required to pay tax at the average rate applicable to an income of that amount and no note will be taken of Rs. 2,400 received by him as his share of the family income.

(b) In the above illustration even if the family income was not taxed in the hands of the manager of the family X's share of family income will not be taken into account in his individual assessment and he will be charged tax on the income of Rs. 13,800 at the average rate applicable to that amount.

(c) If the receipt of Rs. 2,400 is from the profits of an unregistered firm which has already paid tax thereon, total income of X will be:—

(i) income from business and property	Rs. 13,800
(ii) share of profit of unregistered firm on which tax has already been paid by the firm	Rs. 2,400
Total income	Rs. 16,200
Exempted income	Rs. 2,400

Tax will be calculated on Rs. 16,200 and relief will be granted on Rs. 2,400 at the average rate applicable to the income of Rs. 16,200.

(d) If the profits of the firm have not been subjected to tax X will be required to pay income-tax on Rs. 16,200 and will not be entitled to any exemption.

(e) If the receipt of Rs. 2,400 is as a member of an association of persons other than a Hindu undivided family, a company or a firm the treatment will be the same as in the case of an unregistered firm.

(f) If in addition to an income of Rs. 13,800 from business and property in the taxable territories X has an income of Rs. 2,400 in Jaipur (Part B State) which has not been brought into the taxable territories, other than the same Part B State, he will be required to pay tax on Rs. 13,800 at the rate applicable to a total income of Rs. 16,200.

Such was the position prior to the assessments for 1950-51. Since 1st April 1950 (13th April in the case of Patiala and East Punjab States Union) the Indian Income-tax Act has been applied to whole of the territory of India including part B States, but excepting the State of Jammu and Kashmir. To begin with the rates of tax on Part B States income is lower than those applicable to the other taxable territories of India. How income-tax is charged on the total income which includes Part B State income has already been explained elsewhere.

Note—Appropriate earned income relief will be granted in each case in the above illustration.

SECTION 15

EXEMPTION IN THE CASE OF LIFE INSURANCE

(1) The tax shall not be payable in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee, or as a contribution to any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies.

(2) Where the assessee is a Hindu undivided family there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

(2A) Nothing in sub-section (1) or sub-section (2) shall apply to so much of any premium or other payments made on a policy other than a contract for a deferred annuity as is in excess of 10 per cent. of the actual capital sum assured; and in calculating any such capital sum no account shall be taken of the value of any premiums agreed to be returned or of any benefit by way of bonus or otherwise which is to be or may be received either before or after death either by the person paying the premium or by any other person and which is not the sum actually assured.

(3) The aggregate of any sums exempted under this section shall not together with any sums exempted under the second proviso to sub-section (1) of section 7 and any sums exempted under sub-section (1) of section 58F, exceed in the case of an individual, one-sixth of the total

income of the assessee, or six thousand rupees, whichever, is less, and in the case of a Hindu undivided family, one-sixth of the total income of the assessee, or twelve thousand rupees, whichever is less.

Insurance premium paid by an assessee on the assessee's own life insurance or on the life insurance of a wife or husband of the assessee is exempt from payment of income-tax (but not super-tax). Premiums paid on children's education endowment or marriage endowment policies are also exempt. Premium on the life policy of a child is not exempted because it is not an insurance on the life of the assessee. In the case of the assessment of a Hindu undivided family premiums paid on the insurance of any male member of the family or wife of any such member is allowed. In the case of combined life and accident insurance policy, out of the premium paid only so much amount as is attributable to the risk of death is deductible. When a joint policy is taken on the lives of two persons, even if they are wife and husband, no deduction in respect of premium paid is permissible; even half the amount is not allowed.

The insurance policy may be an endowment policy or a whole-life policy, and the premiums may be payable regularly till the policy matures, or for a limited number of years only, or it may even be a single premium policy. A 'fixed term policy' is not a life insurance policy in the true spirit of this section, and, therefore, premiums paid on such policies are not exempted. Insurance may be effected with any company—Indian or foreign.

The exemption allowed to an assessee in respect of life insurance premium (together with Provident Fund contributions, if any) is limited to one-sixth of the total income, with a maximum of Rs. 6,000 in the case of an individual, and one-sixth of total income with a maximum of Rs. 12,000 in the case of a Hindu undivided family. In calculating total income of a salaried man for the purpose of calculating one-sixth amount for exemption in respect of insurance premium—

- (i) earned income allowance should not be deducted,
- (ii) employer's contribution to recognised provident fund and interest on the accumulated balance, if any, should not be taken into account.

The amount of insurance premium though exempted from payment of income-tax is not deducted from total income of the assessee for the purpose of calculating average rate of tax. For calculating average rate 'total income' means as reduced by the amount of earned income relief.

The underlying idea in granting exemption in respect of life insurance premium paid by an assessee is to encourage him to make provision for himself for oldage or for his family after his death. Premiums paid on 'short term policies' taken primarily with the idea of securing exemption from income-tax are, therefore, not allowed beyond a limited amount. Sub-section (2A) of this section provides that insurance premium paid on any policy in excess of 10 per cent. of the 'capital sum assured' shall not be exempted. Capital sum assured means the actual amount for which the policy has been taken and does not include any bonus, profit or other benefit to be added to the sum assured

For a claim for abatement the assessee must produce the original premium receipts of the insurance company and in case an insurance company does not issue formal receipts a certificate of payment of premium must be submitted. The employer while deducting income-tax from salary, at source, under section 18 (2) may allow abatement in respect of insurance premium paid by the employee provided the employee claims it and submits premium receipts to the employer. If the employee does not claim abatement from salary he may do so while submitting his return of income to the Income-tax Officer.

Sometimes a person arranges that his life insurance premium may be paid out of his provident fund. In such a case any sum withdrawn from his provident fund for this purpose

will not be exempt from income-tax. Again no relief is granted in respect of premiums paid out of income accruing or arising outside the taxable territories where such income is not chargeable to Indian income-tax.

Illustrations:

(a) A person's income from property is Rs. 12,000. He is insured for Rs. 30,000 and pays Rs. 800 per year as premium.

His total income is Rs. 12,000 and exempted income Rs. 800. He will be charged income-tax on Rs. 11,200 at the average rate applicable to an income of Rs. 12,000. The amount of tax may also be calculated as follows :—

- (i) calculate tax on Rs. 12,000.
- (ii) find out the average rate by dividing the amount of tax by 12,000.
- (iii) calculate tax on the exempted income of Rs. 800 at the average rate arrived at as in (ii) above.
- (iv) deduct from the amount of tax on Rs. 12,000 as in (i) above the amount of tax on the exempted income as in (iii) above.
- (v) The Balance will be the amount payable as tax.

(b) If the amount of premium paid by the person is Rs. 2,400, only Rs. 2,000 (one-sixth of Rs. 12,000) will be exempted.

(c) If the annual premium is Rs. 1,500 and the total amount of the policies taken (capital sum assured) is Rs. 15,000, only Rs. 1,500 will be exempted (not more than 10 per cent. of Rs. 15,000).

(d) A person's income from salary is Rs. 9,000. He pays Rs. 1,600 per annum—Rs. 1,000 on his own life policy and Rs. 600 on the life policy of his wife. His assessment will be as follows :—

Income from salary	Rs. 9,000
Less Earned Income Relief	
(one-fifth of salary)	<u>1,800</u>
Taxable income	Rs. 7,200

Exempted income (life insurance premium
with a maximum of 1/6th of Rs. 9,000) Rs. 1,500

Tax will be calculated on Rs. 7,200 and on the average rate exemption will be allowed on Rs. 1,500.

(e) A person's income from salary is Rs. 9,000 and from securities Rs. 600. He contributes 5 per cent. of his salary towards a recognised provident fund maintained by the employer and the employer contributes an equal amount. He pays Rs. 1,600 as premium on his life policy. Interest for the year credited to his provident fund account amounted to Rs. 300. His assessment will be as follows :

Income from salary	Rs. 9,000
Income from securities	600
Employer's contribution to provident fund	450
Interest on accumulated balance of P. F.	300
Total	Rs. 10,350.
Less Earned Income Relief	1,800
Assessable income	Rs. 8,550

Exempted income :

(i) Contribution to provident fund (both of the employer and the employee)	Rs. 900
(ii) Interest on accumulated balance of provident fund	300
(iii) Insurance premium—(both P. F. contribution and insurance premium taken together not to exceed 1/6th of total income of Rs. 9,600)	<u>700</u>
	Rs. 1,900

Tax payable will be calculated in the same way as in
(a) above.

SECTION 15A.

EXEMPTION OF PORTION OF EARNED INCOME

The tax shall not be payable by an assessee in respect of such portion, if any, of the earned income included in his total income as is directed by the annual Central Act fixing the rate or rates of tax for any year to be deducted in making an assessment for that year, and for the purposes of determining the rates at which income-tax (but not super-tax) is payable by the assessee for that year his total income shall be deemed to be the total income reduced by the said portion.

Earned income relief is granted to an assessee on account of the consideration of his personal exertion in earning the income. In India such relief was granted for the first time by the Finance Act of 1945, and the portion of income deductible in this respect was fixed at one-tenth of the earned income included in the total income of the assessee, subject to a maximum of Rs. 2,000. Accordingly in the assessments of 1945-46, relief was granted to the extent of one-tenth on all earned income except that under the head 'salaries'. By the Finance Act of 1946, the quantum of relief was increased to one-fifth and the maximum limit was raised to Rs. 4,000 and, therefore, in the assessments of 1946-47, the relief granted in this respect was one-fifth of the earned income under all the heads except that under 'salaries' in which case it was one-tenth. The reason for grant of no relief on salaries in 1945-46 assessments, and only one tenth in 1946-47 assessments, is that rates of Income-tax on salaries, income from securities and dividends, come in force not the same year but the next year. Or in other words in the assessment of income under the heads salaries, securities and dividends the last year's rates apply,

The proportion of earned income to be exempted each year is not fixed by this section or by any other section of the Income-tax Act. It is prescribed by the Finance Act every year.

Exempted portion of income in respect of earned income allowance is not included in the total income of the assessee for the rate purposes, although it is included for all other purposes: for example for calculating one-sixth maximum allowance in respect of insurance premium or provident fund relief or for fixing the maximum annual value of house property in the occupation of the owner. The rate at which rebate is calculated on the exempted income in respect of insurance premium and provident fund contribution etc. is of course, the rate applicable to the total income as reduced by earned income relief. For example the assessment of a person whose total income (wholly earned) is Rs. 6,000, and who has paid Rs. 1,500 as insurance premium, will be as follows:—

	Rs.
Total income (wholly earned)	6,000
Less one fifth of above in respect of earned income relief	<u>1,200</u>
Taxable income	4,800
Exempted income— one-sixth of Rs. 6,000	1,000

Tax payable by the assessee will be income-tax calculated on Rs. 4,800, minus tax calculated on Rs. 1,000 at the average rate.

Note:—For the purpose of calculating insurance relief on the basis of one-sixth, the total income will be Rs. 6,000 and not Rs. 4,800.

Example 2. The total income of an assessee is Rs. 15,000 of which Rs. 10,000 is earned and the remaining Rs. 5,000, is unearned. He paid Rs. 2,500 as insurance premium.

	Rs.
Total income	15,000
Less earned income relief— 1/5th of Rs. 10,000	2,000

Taxable income	13,000
Exempted income	2,500
(1/6th of Rs. 15,000)	

Amount of tax—how to calculate it ?

- (a) Calculate tax on Rs. 13,000.
- (b) Find out average rate by dividing the amount of tax by 13,000.
- (c) Calculate tax on Rs. 2500 (the exempted income) at the average rate.
- (d) Deduct from the amount of tax as in (a) above the exempted portion of it arrived at as in (c) above.

Persons to whom relief is admissible.—An assessee (meaning a person by whom income-tax is payable) who is an individual, Hindu undivided family, unregistered firm or other association of persons is entitled to the “earned income” relief. In the case of a registered firm or firm treated as registered under section 23 (5) (b) of the Act, as the tax is not payable by the firm on its profits relief is admissible to the partners by whom tax is payable and who are assessed in respect of firm’s income. Where a registered firm is assessed under the second proviso to section 23 (5) (a) in respect of the share of income of a non-resident partner, the earned income allowance appropriate thereto would be admissible in determining the tax payable by the firm on behalf of the partner provided the partner is actively engaged in the conduct of the business of the firm. If an unregistered firm is not liable to pay any tax because its income is below the taxable minimum, the appropriate earned income allowance in respect of his share of profits of the firm would be admissible to any partner who was actively engaged in the conduct of the business of the firm.

Note—The second proviso to section 23 (5) (a) lays down that when any partner of a firm is a non-resident his share of the firm’s income is assessed on the firm and firm is required to pay tax on his behalf.

Following are the heads of income on which earned income relief is granted—

Salaries.—Income chargeable under this head is to be treated as “earned income” in the case of all assessees who are entitled to the relief. The ‘annual accretion’ in any year to the balance to the credit of an employee participating in a recognized Provident Fund which is included in his “total income” and which is exempt from tax will be treated as salary for the purposes of computing the earned income allowance admissible in respect of the income under this head.

Profits and gains of business, profession or vocation.—Every individual whether he carries on the business, profession or vocation himself or through employees or through trustees and the income of the business is includible in his total income under Section 16 (1) (c) is entitled to the earned income relief. But no relief is admissible on the income he receives as a beneficiary where the business is carried on by the trustees. If the individual is a partner in a registered firm and is actively engaged in the conduct of the business of the firm, relief is admissible on his share of the profits of the firm. He is entitled to relief also in respect of the share, if any, of his wife or minor child which is includible in his assessment unless the wife or minor child has been given a share on account of the capital invested in the firm which was not transferred directly or indirectly by the individual to the wife or the minor child. If the individual is not himself actively engaged in the conduct of the business of the firm, no relief is admissible on his share of profits in the firm or on his wife’s or minor child’s share in that firm unless the wife or the minor child is actively engaged in the conduct of the business in which event earned income relief would be admissible to the individual in respect of the share of the wife or minor child alone.

In the case of Hindu undivided family or an unregistered firm the position is the same as in the case of an individual.

Other sources.—Examples of income under this head are director’s fees, royalty on books received by an author, letting on hire of machinery or plant where the assessee exercises cons-

tant supervision and the activity is in the nature of business.

Computation of earned income relief—Following are the provisions of the Finance Act of 1951 —

In making any assessments for the year ending on the 31st day of March, 1952, (assessments for 1951-52) there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15 A of the Income-tax Act, an amount equal to one-fifth of the earned income, if any, included in his total income but not exceeding in any case four thousand rupees.

Provided that—

- (i) no tax shall be payable on a total income which before deduction of the allowance for earned income does not exceed Rs. 7200 in the case of every Hindu undivided family and Rs. 3 600 in every other case;
- (ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance for earned income) exceeds the said limit;
- (iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds the said limit the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the prescribed rates—

whichever is less.

A Hindu undivided family in order to claim the above allowance must satisfy either of the following conditions, namely :—

- (a) that it has at least two members entitled to claim partition who are not less than 18 years of age; or
- (b) that it has at least two members entitled to claim

partition neither of whom is lineal descendant of the other and both of whom are not lineally descended from any other living member of the family.

Explanation—for the purposes of this paragraph, in the case of every Hindu undivided family governed by the Mitakshara law, a son shall be deemed to be entitled to claim partition of the co-parcenary property against his father or grandfather, notwithstanding any custom to the contrary.

Illustrations:

(1) A professor in a Government College draws a monthly salary of Rs. 305. Tax payable by him for the assessment year 1951-52, will be found out as follows :—

(assuming that salary is the only source of his income)

	Rs.
Salary (total income)	3,660
Less earned income relief	732
Taxable Income	<u>2 928</u>

He will pay income-tax on Rs. 2,928, in proportion to the amount of tax payable on his total income of Rs. 3,660.

The tax payable on Rs. 3,660, should not exceed one-half of the excess over Rs. 3,600, i. e. Rs. 30. Thus tax payable by him on his taxable income of Rs. 2,928, for the assessment year 1951-52, shall be Rs. 24, the same proportion of Rs. 30, as Rs. 2,928 is of Rs. 3,660 (3,660 : 2,928 :: 30 : 24), and not Rs. 66-15 annas, calculated on the basis of prescribed rates.

If on the other hand salary is Rs. 320 per month, the tax calculation will be as follows :—

	Rs.
Salary (total income)	3,840
Less earned income relief	768
Taxable income	<u>3,072</u>

The total tax payable by him will be Rs. 73-11 annas (at prescribed rates on Rs. 3,072).

(2) Mr. X draws a salary of Rs. 450 per month. He pays at the rate of one anna to a rupee towards recognized provident fund maintained by the employer, the employer contributing an equal amount. Interest added to his accumulated balance in the provident fund amounted to Rs. 120. He paid Rs. 300, during the previous year, as premium on his life policy.

His assessment for the year 1951-52 will be as follows : —

	Rs.
Salary at Rs. 450 per month for 12 months	5,400
Employer's contribution to provident fund at the rate of one anna per rupee	337-8
Interest on accumulated balance of provident fund	120-0
Total Income	5,857-8
Less earned income relief— (1/5th of Rs. 5,857-8as.)	1,171-8
Taxable Income	4,686-0
Exempted Income	
(i) Provident fund contributions of both —the employer and the employee	675-0
(ii) Life insurance premium (balance of Rs. 900-1/6th of regular salary)	225-0
(iii) Interest on provident fund	120-0
	1,020-9

SECTION 15 B

EXEMPTIONS ON ACCOUNT OF DONATIONS FOR CHARITABLE PURPOSES

(1) The tax shall not be payable by an assessee in respect of any sums paid by him on or after the first day of April 1948 as donations to any institution or fund which is established in the taxable territories for a charitable purpose and is approved by the Central Government for the purpose of this section:

Provided that the total of the sums so paid is not less than two hundred and fifty rupees:

Provided further that in the case of a company this exemption shall apply only in respect of the income-tax, and not in respect of any super-tax, payable by it.

Explanation—In this section, 'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.

(2) The aggregate of any sums exempted under this section shall not exceed—

(a) one-twentieth in the case of a company, and one-tenth in any other case, of the assessee's total income as reduced by any portion thereof exempt from tax under any other provision of this Act, or

(b) two hundred and fifty thousand rupees, whichever is less.

Provided that where any sum paid during the previous year as donation to the fund known as the Gandhi National Memorial Fund is in excess of the limits specified in this section, the exemption granted under this

section shall apply to the whole of that sum.

(3) The amount by which the tax payable by an assessee is reduced on account of an exemption under this section shall not in any case exceed half the amount in respect of which the exemption is allowed under this section.

This new section, the object of which is to encourage charities by the public to deserving institutions in taxable territories, was added by the Finance Act of 1948. The amount given in charities is exempted both from income-tax and super-tax in cases of all assessees, except companies, in whose case it is exempted from income tax only. In order to claim exemption under this section the institution to which charities are given must be approved by the Central Government. A list of all such institutions is given in the Income-tax Manual.

The total exemption granted in respect of such donations is 5 per cent. in the case of companies and 10 per cent. in other cases, of the total income (as reduced by any other exemptions) with a minimum of Rs. 250 and maximum of Rs. 2,50,000. The maximum limit, of course, does not apply to Gandhi National Memorial Fund. The rebate of tax on account of exemptions of the donations should not exceed half the amount of income in respect of which the exemption is allowed. The amount exempted under this section is included in the total income of the assessee and is taken into account for the purpose of determining the rate of income-tax and super-tax payable by him. Following departmental instructions have been issued in this respect:—

The exemption granted in respect of donations to approved institutions and charities is on the same basis as the exemption in respect of insurance premium, paid by an assessee but whereas the exemption in the case of insurance premiums is only in respect of income tax, the exemption in the case of donations applies to both—income-tax and super-tax, except in the case of a company where it applies to income-tax only.

The amount exempted under this section will be included in the total income for the purposes of rates of income-tax and super-tax as the case may be.

The exemption applies to donations paid by an assessee on or after 1st April 1948—vide Income-tax Amendment Act (LV of 1948), 1948. No exemption will therefore be allowed in the assessment for the financial year 1948-49 unless in the case of any assessee whose previous year falls partly after 31st March 1948 and the donation has been made after that date.

Income-tax is deducted at source from the salary and the employer can give abatement in respect of insurance premium paid by the employee, but he should not allow abatement in respect of donation made by him for charitable purposes. Abatement in respect of charities is allowed at the time of assessment.

Illustrations:

(1) During the previous year ended 31 March 1951, total income of Shri Daulat Ram was Rs. Rs. 18,000. He paid Rs 1,500 life insurance premium and Rs. 3,000 donation to C.G. Hospital which is recognised by the Central Government. Prepare his assessment for 1951-52.

Solution:

Total income		Rs. 18,000
Exempted income—	Rs.	
(a) in respect of life insurance premium	1,500	
(b) in respect of donation—		
10% of (Rs. 18 000 less Rs. 1500) Rs. 16,500	1,650	3,150

(2) A company made a profit of Rs. 1,50,000, of which Rs. 10,000 is from non-taxable sources. The company paid Rs. 15,000 towards recognised charities. Find out the amount of donation which will be exempted from payment of income-tax and super-tax.

Solution:

	Rs.
Total profit of the company	1,50,000
less income from non taxable sources	10,000
Total income	1,40,000

Income exempted on account of charitable

donations, from payment of income-tax

only, limited to 5 per cent. of Rs. 1,40,000 Rs. 7,000

In the case of a company exemption from super-tax is not allowed. The company shall, therefore, pay income-tax on Rs. 1,33,000 at the maximum rate and super tax on Rs. 1,40,000.

(3) A's income from a registered firm of which he is a partner is Rs. 1,00,000. He has no other source of income. He donated a sum of Rs. 12,000 to Kamla Nehru Hospital Allahabad, which is recognised by the Central Government. Find out the amount of donation exempt from tax and the amount of tax payable by A for the assessment of 1951-52.

Solution:

<i>Assessment of A:</i>	Rs.
Income from business	1,00,000
Less earned income relief	4,000
	Rs. 96,000
Less maximum amount of donation permissible (one-tenth of Rs. 1,00,000)	Rs. 10,000
Taxable income	Rs. 86,000
Amount of tax payable —	
(i) income tax on Rs. 86 000 (at the average rate applicable to an income of Rs.96,000)	Rs. 20,598-4
(ii) Super tax on Rs. 90,000 (at the average rate applicable to an income of Rs. 1,00,000)	Rs. 24,363-5
	<hr/> Rs. 44,961-9

Calculation of income-tax—

On first Rs. 1,500	nil
On next Rs. 3,500 at 9 pies	Rs. 164- 1-0
On next Rs. 5,000 at -/1/9 pies	546-14-0
On next Rs. 5,000 at 3 annas	937- 8-0
On the balance Rs. 81,000 at 4 annas	20,250- 0-0
Tax on total of Rs. 96,000	Rs. 21,898- 7-0
Add 5 per cent. surcharge	1,094-15-0
Total	Rs. 22,993- 6-0
Proportionately tax on Rs. 86,000	Rs. 20,598- 4-0

Calculation of super-tax—

On first Rs. 25,000	nil
On next Rs. 15,000 at 3 annas	Rs. 2,812-8
On next Rs. 15,000 at 4 annas	3,750-0
On next Rs. 15,000 at 6 annas	5,625-0
On next Rs. 15,000 at 7 annas	6,562-8
On next Rs. 15,000 at 7½ annas	7,031-4
Tax on total of Rs. 1,00,000	Rs. 25,781-4
Add 5 per cent. surcharge	1,289-1
Total	Rs. 27,070-5
Proportionately tax on Rs. 90,000	Rs. 24,363-5

Amount of tax payable without taking into account exemption in respect of donation—

(i) income-tax on Rs. 96,000	Rs. 22,993- 6-0
(ii) super-tax on Rs. 1,00,000	Rs. 27,070- 5-0
Total	Rs. 50,063-11-0

Amount of tax after taking into account exemption in respect of donations :—

(i) income-tax on Rs. 86,000	Rs. 20,598-4-0
(ii) super-tax on Rs. 90,000	Rs. 24,363-5-0
Total	<u>Rs. 44,961-9-0</u>

According to the provisions of Section 15B the total tax reduction on account of charitable donations cannot be more than half the amount of donation which is Rs. 10,000 in this case. The actual tax payable, therefore, will be Rs. 50 063-11-0 less Rs. 5,000 = Rs. 45,063-11-0, because tax calculated otherwise comes to Rs. 44,961-9-0, which is less than this amount.

SECTION 15 C

EXEMPTION FROM TAX OF NEWLY ESTABLISHED INDUSTRIAL UNDERTAKINGS—

(1) Save as otherwise hereinafter provided, the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed 6 per cent. per annum on the capital employed in the undertaking, computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue.

(2) This section applies to any industrial undertaking which—

- (i) is not formed by the splitting up, or the reconstruction of, business already in existence or by the transfer to a new business of building, machinery or plant used in a business which was being carried on before the 1st day of April, 1948.
- (ii) has begun or begins to manufacture or produce articles in any part of the taxable territories at any time within a period of 3 years from the 1st day of April, 1948, or such further period as the Central Government may, by notification in the official Gazette, specify with reference to any particular industrial undertaking;
- (iii) employs more than 50 persons;
- (iv) involves the use of electrical energy or any other form of energy which is mechanically transmitted and is not directly generated by human agency:

Provided that the Central Government may, by notification in the official Gazette, direct that the exemption conferred by this section shall not apply to any particular industrial undertaking.

(3) The profits or gains of an industrial undertaking to which this section applies shall be computed in accordance with the provisions of section 10.

(4) The tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking as is attributable to that part of the profits or gains on which the tax is not payable under this section.

(5) Nothing in this section shall affect the application of section 23A in relation to the profits or gains of an industrial undertaking to which this section applies, and for the purposes of that section, the expression "assessable income" shall be deemed to include the profits or gains in respect of which the tax is not payable under this section.

(6) The provisions of this section shall apply to the assessments for the years commencing on the 1st day of April, 1949, and ending on the 31st day of March, 1954.

During the post-war period Government took several measures with the object of checking inflation on the one hand and helping rehabilitation of the old, and starting of new, industries so that the position with regard to supply of goods which of late years has become very acute may ease to some extent at least. This section has been enacted with the object of helping in starting of new industrial undertakings.

As per the provisions of this section—

(1) New undertakings which commence production of goods within the period of three years—from 1st April 1948, to

31st March, 1951—are allowed concession in tax. This period may be extended by the Central Government in any particular case and the Central Government has also the power to exclude any undertaking from the benefit of this section. In order to claim this concession the undertaking should really be a new undertaking and not formed by reconstructing an old one.

(2) The undertaking should employ at least fifty persons and use electric or other mechanically transmitted energy.

(3) The measure of exemption is, for a period of five years, ending on 31st March, 1951, the profits of the company up to six per cent. on the capital employed. The capital employed in the undertaking will be computed in accordance with the rules framed by the Central Government in this behalf.

(4) The income so exempted will be included in the total income of the assessee for the purposes of rates of income-tax and super-tax.

(5) Dividends paid to the shareholders of the company will be exempted in the hands of the shareholders to the same extent to which the profits of the company are exempted.

SECTION 16

EXEMPTIONS AND EXCLUSIONS IN DETERMINING THE TOTAL INCOME.

In computing the total income of an assessee—

(a) any sums exempted under the second proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and section 15, section 15 B and section 15 C shall be included and any sum exempted under section 15 A shall also be included except for the purpose of determining the rates at which income-tax (but not super-tax) is payable by the assessee to whom the exemption is given;

(b) when the assessee is a partner of a firm, whether the firm has made a profit or a loss, his share (whether a net profit or a net loss shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year:

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of Section 24;

(c) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act, 1939, from assets remaining the property of the settlor or donor,

shall be deemed to be income of the settlor or disponent, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor:

Provided that for the purpose of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the re-transfer directly or indirectly of the income or assets to the settlor, disponent or transferor a right to reassume power directly or indirectly over the income or the assets:

Provided further that the expression 'settlement or disposition' shall for the purposes of this clause include any disposition, trust, covenant, agreement, or arrangement, and the expression settlor or disponent 'in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made:

Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponent derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him.

(2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased to such amount as would, if income-tax (but not super-tax) at the rate applicable to the total income of the company (without taking into account any rebate allowed or additional income-tax

charged) for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed, were deducted therefrom, be equal to the amount of the dividend.

Provided that when any portion of the profits and gains of the company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the increase to be made under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company.

(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) So much of the income of a wife or minor child of such individual as arises directly or indirectly—

- (i) from the membership of the wife in a firm of which her husband is a partner;
- (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;
- (iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or
- (iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration; and

(b) so much of the income of any person or association of persons as arises from assets transferred

otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both.

'Total Income' means entire income of an assessee derived from all taxable sources and computed in the manner laid down in the Act. Total income includes exempted income [except that which is altogether exempt as specified in Section 4 (3) or income received by a member of a Hindu undivided family under section 14 (1)], tax deducted at source and tax paid by others on behalf of the assessee. It also includes exempted portion of earned income (Section 15A), for all purposes except for the purpose of determining the rate of income-tax. Total income of an assessee does not mean the same thing as the actual assessable income.

Computation of total income is important for more than one reasons:—

(i) Income-tax is assessed upon an assessee on his income in any one of the following two ways:—

(a) Tax is calculated at the rates applicable to various slabs into which the total income of the assessee can be divided and abatement is allowed to him on the exempted income at the average rate of tax determined with reference to the tax on total income as above. or,

(b) tax is assessed upon the assessable income of an assessee at the average rate determined with reference to tax calculated on his total income.

(ii) Computation of total income is necessary also for calculating the liability of the assessee in respect of super-tax, if any, payable by him.

(iii) The maximum amount of exemption permissible in respect of insurance premium paid by an assessee is determined with reference to his total income. The annual value of the house occupied by the owner for his residence is restricted to a maximum of 10 per cent. of the total income.

'Total World Income' means the entire income (from all taxable sources) of an assessee, wherever arising (within or without the taxable territories). A resident is taxed upon his foreign income also and therefore, in his case his 'total world' income' is his 'total income' on which he is taxed. A non resident is taxed upon his Indian income only. Up to the assessments of 1950-51, non residents were divided into the following two classes—

- (i) Indian citizen or British subject not domiciled, and
- (ii) others.

For the purpose of taxation the two classes of non residents were differently treated. Those falling in the first group were taxed on their Indian income at the appropriate rate of tax applicable to their total world income while those falling in the second group were taxed upon their Indian income at the maximum rate of tax. By the Finance Act of 1951 subsection (1) of Section 17 has been so amended as to do away with the distinction between the two classes of non residents with the result that from the assessments of 1951-52 onwards all non residents, irrespective of the fact whether they are Indian citizens or British subjects or otherwise and also irrespective of their world income will be taxed upon their Indian income at the maximum rate of income tax.

Various classes of income or portions of income which are included in the total income of the assessee but are exempt from payment of tax have already been referred to. Following are other portions applicable to total income—

(1) *Share in the profit or loss of a firm*—When the assessee is a partner in a firm his share in the profit or loss of the firm is taken to be—

- (i) any salary, interest, commission or remuneration payable to him by the firm, and
- (ii) his share in the balance (which may be profit or loss) after allocation of partners' salary, interest, commission, etc.

If the partner's share of firm's income so computed is a

loss, it will first be set off against the other income of the partner, if any, in the same year, otherwise it will be carried forward to be set off against his income of the same business next year or following years, up to a period of six years.

(2) *Settlement of income and transfer of assets—revocable or irrevocable.*—Some people may try to avoid payment of tax by settlement of income upon other person or persons, who are not liable to pay tax or whose rate of tax is lower than that of the settlor. For the purposes of taxation the income of the settlement is treated as the income of the settlor and is included in his total income irrespective of the fact whether the settlement (transfer of income) is revocable or not. If the settlement of income is accompanied by transfer of assets also then too the income is included in the total income of the transferee unless the transfer is irrevocable for a period of at least six years or during the life time of the transferee (i. e. the beneficiary) and the settlor derives no benefit, direct or indirect, from the income.

Revocable transfer or settlement is one in which the transferer or the settlor retains the right to resume power, directly or indirectly, over the income or the assets, even though the power may have not been exercised. An irrevocable settlement will be regarded as revocable if the settlement can be cancelled by the trustees in their sole discretion or the settlor has the power to vary the trustees or beneficiaries. Transfer of assets to wife or a minor child is ignored and the income is treated as income of the transferer and included in his total income, even though the transfer is irrevocable.

(3) *Income from 'Benami' transactions.*—Some times a person, in order to avoid tax, may purchase property not in his own name but in the name of a third person whose income is not liable to tax, or is liable to tax at lower rate than that applicable to his own income. Such transactions are called 'Benami' transactions and in such cases Income-tax Officer should find out the real owner of the property and tax him on

the income of the property. Under such a device of the assessee would also come the property purchased by him in the name of his wife.

(4) *Dividends*—The actual amount of dividend received by a person should be grossed up as already explained elsewhere and the gross amount is deemed to be his income of the previous year in which the dividends are paid, credited or distributed. The gross amount is included in his total income. In grossing up only the proportionate amount of tax is added if the profits of the company from which they are received were not wholly taxable. The difference between the grossed up amount and the net amount of dividend is the amount of which credit is given to the shareholder in his assessment.

Under Section 23A, the Income-tax Officer, in the case of a private company which has not distributed up to sixty per cent. of its assessable income, may pass an order that sixty per cent. of the profits be taken as distributed and additional amount be allocated in the dividend of the shareholders. Such enhanced amounts of dividend shall then be included in the total income of each shareholder for the purpose of tax. If the reserves of the company exceed the paid up capital, hundred per cent. will be substituted for sixty per cent.

(5) *Income of wife or minor child*:—Following kinds of income of wife or minor child of the assessee is deemed to be assessee's own income and is included in his total income:—

- (i) Share, as member, of wife or minor child, in the profits of the firm of which the assessee is also a partner. With a view to avoid payment of income-tax there grew a tendency among businessmen to take their wives and children as partner in their firms, and in support of their actions passed necessary entries in the books of accounts.
- (ii) Income of wife or minor child other than a married daughter, from assets transferred, directly or indirectly, for their benefit, by the assessee, except

when such transfer is either for adequate consideration or in connection with an agreement to live apart. Transfer is ignored because it is the duty of the husband or the parent to maintain his wife or minor child. It is immaterial for this purpose even if the transfer is by an irrevocable deed. Adequate consideration means sufficient money value to cover, or nearly to cover what is transferred. A transfer out of mere natural love and affection is not for consideration for the purposes of this subsection. Income from property acquired by wife out of savings from allowances granted to her by her husband for her personal expenses will, of course, be wife's personal income and will not be included in the total income of the husband.

- (iii) Income from assets transferred by the assessee to a third party (a person or an association of persons) for the benefit of wife or minor child, otherwise than for adequate consideration.

In addition to the provisions of this section there are other provisions also with regard to inclusions in, and computation of, total income of an assessee:—

(a) *Section 44D: Avoidance of income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad:* The method that may be adopted for this device is that an assessee with huge amount of income liable to high rate of super-tax, transfers his assets from which the income arises to a private company floated by him abroad for the purpose and of which substantially he is the sole shareholder. The profits, or a very major portion of the profits, of his business, therefore, go to the foreign dummy company. He arranges to get back these profits from this foreign company in the form of loan etc. (capital receipt) which he would never return and thus avoids super-tax. The company being a foreign company, the assessee cannot be caught under the provisions of section

23A also, which deals with a company which, to enable its shareholders to avoid super-tax, fails to distribute its income. The object of this section is to check such devices on the part of assessee, by laying down that in order to treat income from assets transferred as income of the transferee the transfer and all associated operations should be bona fide commercial transactions and should not be designed for the purpose of avoiding liability to tax.

(b) *Section 44E: Avoidance of tax by certain transactions in securities* - When securities are sold in between the two dates of interest the next interest paid on them is not apportioned on time basis between the seller and the purchaser, for the purpose of assessment of income-tax, although the seller has got its benefit from the purchaser in the form of additional amount included in the price at which he sold. The entire interest or dividend accrues to the holder thereof over the date of interest (the transferee) and is taxed upon him. Taking advantage of the above some people transfer securities just a little before the date of interest to persons who are liable to no tax or are liable to tax at a lower rate, with the understanding to purchase them back after the interest is paid and save income-tax in this way. The additional amount charged by the transferer is capital receipt in his hands and as such not taxable. If the Income tax Officer is satisfied that such transactions in securities have taken place with the object of avoiding tax he will treat income from the securities transferred as the income of the transferer and tax as such in spite of the transfer. In addition the Income-tax Officer is empowered to impose a heavy penalty on the transferer. Such transactions are known as 'bond washing' transactions.

If the party chosen for the transfer of securities is a person or firm who deals in securities income-tax will practically wholly be avoided. The transferee while on the one hand will have income as interest on securities on the other he will claim loss on their sale, and the two items (income

and the loss) will more or less be equal. He paid a higher price when he purchased the securities (with several months interest accrued on them) cum-div and naturally will get lower price when he sells them just after the interest date.

SECTION 17

DETERMINATION OF TAX PAYABLE IN CERTAIN SPECIAL CASES

(1) Where a person is not resident in the taxable territories and is not a company, the tax, including super-tax payable by him or on his behalf on his total income shall be an amount equal to—

(a) the income-tax which would be payable on his total income at the maximum rate, *plus*

(b) either the super-tax which would be payable on his total income at the rate applicable in the case of an individual to the slab next to the slab exempt from super-tax, or the super-tax which would be payable on his total income if it were the total income of a person resident in the taxable territories, whichever is greater.

Provided that any such person may, on the first occasion on which he is assessable for any year subsequent to the year ending on the 31st day of March, 1951, and before the 30th day of June in that year, or where the first occasion on which he is so assessable falls during the year ending on the 31st day of March, 1952, before such date as the Central Board of Revenue may, by notification in the Official Gazette, specify in this behalf, by notice in writing to the Income-tax Officer declare (such declaration being final and being applicable to all assessments thereafter) that the tax, including super-tax payable by him or on his behalf on his total income shall be determined with reference to his total world income, and thereupon such tax shall be an amount bearing to the total amount of tax including super-tax

which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income.

Note—The above sub-section (1) has been substituted in place of the old one and comes in force from 1st day of April, 1950. (Ref. Finance Act 1951).

(2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the income-tax excluding super-tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super-tax which would have been payable on the total income had no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income.

(3) Where there is included in the total income of any assessee any income exempted from tax under clause (c) of sub-section (2) of section 14 or under section 15B or under section 15C, the super-tax payable by the assessee shall be an amount bearing to the total amount of the super-tax which would have been payable on the total income had no part of it been so exempted the same proportion as the total income less the portion so exempted bears to the total income.

(4) Where any income exempted from tax under clause (c) of sub-section (2) of section 14 which has been taken into account under sub-section (2) or sub-section (3) of this section as part of the total income of an assessee for the purpose of determining the income-tax or super-tax payable by him is in a subsequent year brought into or received in the taxable territories by the assessee and becomes chargeable with tax accordingly the tax including super-tax payable by the assessee on his

total income of that subsequent year shall be—

(a) The amount which bears to the total amount of the tax including super-tax which would have been payable on his total income as reduced by the amount of the income so brought into or received in the taxable territories had such reduced income been his total income the same proportion as his total income bears to such reduced income, or

(b) the amount which bears to the total amount of the tax including super-tax which would have been payable on the amount of the income so brought into or received in the taxable territories had such income been his total income the same proportion as his total income bears to the amount of the income so brought into or received in the taxable territories, whichever is the greater.

(5) Where the amount of the total income of any assessee is deemed to be the total income reduced under the provisions of section 15 A by an allowance for earned income, the expression 'total income' in this section shall, for the purpose of determining the amount of income-tax (but not super-tax) payable by the assessee, be deemed to refer to his total income so reduced.

(6) Where the total income of an assessee, not being a company, includes any income chargeable under the head "Capital gains," the tax, including super-tax payable by him on his total income shall be—

(i) income-tax and super-tax payable on his total income as reduced by the amount of such inclusion, had such reduced income been his total income, *plus*

(ii) income-tax on the whole amount of such inclusion at the following rates, namely:—

Where such amount—

exceeds Rs. 15,000 but does not

exceed Rs. 50,000 " " " One annas in the rupee

exceeds Rs. 50,000 but does not

exceed Rs. 2,00,000 " " " Two annas in the rupee
exceeds Rs. 2,00,000 but does not

exceed Rs. 5,00,000 " " " Three annas in the rupee
exceeds Rs. 5,00,000 but does not

exceed Rs. 10,00,000 " " " Four annas in the rupee
exceeds Rs. 10,00,000 " " " Five annas in the rupee

Provided that where owing to the fact that the amount of such inclusion has exceeded a certain limit, income-tax thereon is payable or is payable at a higher rate, the amount of income-tax so payable shall be reduced so as not to exceed—

(a) the amount which would have been payable if the amount of such inclusion had not exceeded that limit, *plus*

(b) one-half of the amount by which the amount of such inclusion exceeds that limit,

(7) Where the total income of a company includes any income chargeable under the head "Capital gains" the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusions at the rate of super-tax (excluding the rate of additional super-tax, if any) specified in the case of a company by the annual Act of the Central Legislature fixing the rate or rates of tax for that year.

From 1st April, 1951, the Act with regard to assessments of non-residents has been amended. Prior to this amendment non-residents were classed under two heads:—

(i) Those who were not residents in the taxable territories

and were citizens of India or British subjects ;

(ii) Other non-residents.

The method of assessing the two classes of non-residents was different. Those falling in the first group were assessed (both in respect of income-tax and super-tax) on their total income at the average rate of taxes applicable to their total world income. The other non-residents were assessed as follows :—

(a) Income-tax on their total income at the maximum rate;

(b) Super-tax on their total income at the average rate of super-tax applicable to the amount of their total world income.

By the amendment of 1951, the above classification of non-residents has been removed and all non-residents whether citizens of India or British subjects or others have been put in the same category. The basis now provided for their taxation is as follows:—

(a) Income-tax on their total income at the maximum rate;

(b) Super-tax, either

the amount of super-tax payable on his total income at the rate applicable to the slab next to the slab exempt from super-tax, or

the amount of super-tax payable on his total income if it were the total income of a person resident in the taxable territories,

whichever is greater.

Illustration

The total income of a person not-resident in the taxable territories is Rs. 50,000 the tax payable by him will be as follows:—

Income-tax—

At the rate of 4 annas per rupee

on Rs. 50,000 Rs. 12,500

Add 5 per cent. surcharge on above 625 Rs. 13,125

Super-tax :

Either—At 3 annas per rupee	Rs.
on Rs. 50,000	9,375
Add 5 per cent. surcharge	468-12
Total	<u>9,843-12</u>

Or—Super-tax on Rs. 50,000 if it
were total income of a resi-
dent, according to rates
applicable to various slabs
included in the amount

	Rate	Super-tax	Surcharge
on the first Rs. 25,000			
of total income	Nil	Nil	Nil
on the next Rs. 15,000			
of total income	3 as.	Rs. 2,812-8	Rs. 140-10
on the next Rs. 10,000	4 as.	<u>2,500-0</u>	<u>125-0</u>
		Rs. 5,312-8	<u>265-10</u>
Surcharge		<u>265-10</u>	
Total Super-tax		<u>Rs. 5,578-2</u>	
whichever is greater—			<u>9,843-12</u>
Total tax payable— Income-tax	Rs. 13,125-0		
Super-tax		9,843-12	<u>22,968-12</u>

In the above illustration if the total income is Rs. 1,00,000
the tax payable will be as follows:—

Income-tax:

At the rate of 4 annas per rupee	
on Rs. 1,00,000	Rs. 25,
Add 5 per cent. Surcharge	<u>1,250</u> Rs. 26,250-0

Super-tax

Either at 3 annas per rupee	
on Rs. 1,00,000	Rs. 18,750-0
Add 5 per cent. surcharge	<u>937-8</u>
Total	<u>19,687-8</u>

or Super tax on Rs. 1,00,000,
 according to rate applicable
 to various slab included in the
 amount Rs. 27,070-

Whichever is greater	Rs. 27,070-5
Total tax payable	Rs. <u>53,320-5</u>

By the Amendment of the Act new non-resident assesseees coming under assessment subsequent to the year ending 31st March, 1951, have been given the option to choose to be taxed in the manner in which Indian citizen or British subject non-residents were taxed before the amendment. If the assessee so chooses he should give notice of his desire, in the first year of his assessment, by a particular date in that year, to the Income tax Officer. Such a declaration will be final and will be applicable to all assessments thereafter.

Sub-sections (2) to (5) of this section refer to treatment of exempted income in the assessment of a person. These exemptions have already been dealt with in the following sections-

Sec. 14—Exemptions of general nature—

- (a) Share in the profits of an unregistered firm;
- b) Share of income of an association of persons other than Hindu undivided family, company or firm;
- (c) income arising in Part B States.

Sec. 15—Exemption in respect of life insurance premium.

Sec. 15 A—Exemption of portion of earned income.

Sec.15B —Exemption on account of donations for charitable purposes.

Sec. 15C—Exemption from tax of newly established industrial undertakings.

Sub-sections (6) and (7) refer to Capital Gains Tax which has already been dealt with in Section 12B.

SECTION 18

PAYMENT BY DEDUCTION AT SOURCE

(1) [Repealed]

(2) Any person responsible for paying any income chargeable under the head “Salaries” shall, at the time of payment, deduct income-tax and super-tax on the amount payable at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head:

Provided that such person may, at the time of making any deduction increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(2A) Notwithstanding anything hereinbefore contained for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head “Salaries” which is payable to the assessee out of India by or on behalf of the Government and the value in rupees of such income shall be calculated at the prescribed rate of exchange.

(2B) Any person responsible for paying any income chargeable under the head ‘Salaries’ to a person not resident in the taxable territories shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head.

(3) The person responsible for paying any income

chargeable under the head "Interest on securities" shall, unless otherwise prescribed in the case of any security of the Central Government, at the time of payment, deduct income-tax but not super-tax on the amount of the interest payable at the maximum rate :

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income or the total world income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section or in sub-section (2B), as the case may be, to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be.

(3A) Any person responsible for paying to a person not resident in the taxable territories any interest not being 'Interest on Securities', or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate.

Provided that where the person so payable is a citizen of India or a British subject as defined in section 1 of the British Nationality Act 1948 and the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total world income of such person will be less than the minimum liable to income-tax or that his total income will be liable to a

rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be:

Provided further that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which the person responsible for making the payment is deemed under the first proviso to section 43 not to be an agent of the payee.

(3B) Where the Income-tax Officer has reason to believe that the total world income of any person residing out of the taxable territories to whom any interest not being "Interest on Securities" or any other sum chargeable under this Act is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for making such payments to such person to deduct at the time of payment super-tax at the rates determined by the Income-tax Officer to be applicable to the total world income of such person in that year.

(3C) Where the person responsible for paying any interest not being "Interest on Securities" or any other sum chargeable under this Act to any person makes to that person in any year payments exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for making such payments shall, if he has no reason to believe that the recipient is resident in the taxable territories and no order under sub-section

(3B) has been received in respect of such recipient, deduct at the time of payment super-tax on the amount by which the total amount of such payments exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

(3D) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of the taxable territories and that the total world income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.

(3E) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by an Indian company or by a company which has made such effective arrangements as may be prescribed for the deduction of super-tax from such dividends increased in accordance with the provisions of sub-section (2) of section (16) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has no reason to believe that the shareholder is resident in the taxable territories and no order under sub-section (3D) has been received in respect of such shareholder by the Principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount

of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (increased as aforesaid) constituted the whole total income of the shareholder.

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section and any sum by which a dividend has been increased under sub-section (2) of section 16 shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act.

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

Provided further that where such person or owner is a person whose income is included under the provisions of clause (c) of sub-section (1) or sub-section (3) of Section 16, Section 44D or Section 44E in the total income of another person such other person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed

time by the person making the deduction to the credit of the Central Government or as the Central Board of Revenue directs.

(7) If any such person does not deduct or after deducting fails to pay the tax as required by or under his section, he, and in the cases specified in sub-sections (3D) and (3E) the company of which he is the Principal officer shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax :

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax or super-tax in accordance with the provisions of sub-section (3), (3A), (3B), (3C); (3D) or (3E), shall, at the time of payment of the sum from which tax has been deducted furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

There are two methods of collection of tax payable by an assessee:—

- (i) Deduction at source;
- (ii) Direct collection.

According to the provisions of section 18, tax is deducted

at source from income under the following heads—

- (i) Salaries (Income-tax and super-tax);
- (iii) Interest on Securities (Income tax only);
- (iii) Interest or other payments made to non-residents (Income-tax and super-tax); and
- (iv) Dividend (Super-tax from non-resident shareholders)

The Indian Income-tax Act lays down that any person responsible for paying any of the above incomes, shall, at the time of making payment deduct tax (income tax or income tax and super tax, as the case may be) according to the provisions of the law and pay the same, on behalf of the person from whose income deduction is made, within the prescribed period of time, to the credit of the Central Government. He should also furnish a certificate to the person from whose income deduction is made, to the effect that tax has been deducted, specifying the amount deducted, the rate at which it has been deducted and such other particulars as may be prescribed.

If the person required to deduct tax at source fails to do so, or if having done so fails to pay the amount deducted to the credit of the Central Government, he shall be deemed to be an assessee in default in respect of the tax.

In the case of income in respect of which provision is not made under section 18. for deduction of tax at source at the time of payment of income, or in the case in which tax should have been deducted at source according to the provisions of section 18, but the same is not deducted by mistake or for any other reason, the tax shall be payable by the assessee direct.

All sums deducted at source as tax should, for the purpose of computing the income of an assessee, be deemed as income received.

Deduction of tax from salary.—Tax, both income-tax and super-tax, is deducted at source from the salary of all employees whether in Government service or private employment. Persons responsible for paying salary are required to deduct tax every

time the payment is made. The rate at which deduction is calculated is the average rate applicable to the estimated total income of the employee, during the current financial year under the head salaries. If the employee is not resident in the taxable territories income-tax must be deducted at the maximum rate and super-tax at the rate applicable to the total income of the assessee under this head. Monthly tax deductions are calculated at the rates of the previous year and not those of the current financial year. If after some months the basis of salary has changed, or the employer discovers that some mistake has been committed in calculating the amount of monthly deductions, or by mistake no deductions have been made, he may recalculate tax and make adjustment in the amount to be deducted during the remaining months of the year.

Tax must also be deducted from the salary paid to an employee out of taxable territories, by or on behalf of the Government. The amount of salary must be converted into rupees at the prescribed rate of exchange. For the time being the rate between pound sterling and rupee is 1s.-8d.

While calculating the monthly tax deductions from the salary of an employee the employer may take into account the exemptions to which, according to the provisions of the law, he is entitled, for example exemptions in respect of deductions from his salary for securing a deferred annuity, his contributions towards provident fund or superannuation fund, or payment by him of insurance premiums. In respect of above deductions, contributions and premiums rebate is admissible on account of income-tax and not super-tax.

Illustrations :

(1) Monthly salary of Shri H. P. Modi is Rs. 750. According to terms of service he is entitled to annual increment of Rs. 50 from July 1, 1951. He pays Rs. 752 per year premium on his life insurance policies, of which he has informed his employer and hands him the receipts as and when they are

received. Calculate the amount of monthly tax deductions from his salary.

Solution

Salary for the whole year—	Rs.
For 4 months at Rs. 750 per month	3,000
For 8 months at Rs. 800 per month	6,400
Total Income	9,400
Less Earned income relief	1,880
Taxable income	7,520
Income tax on Rs. 7,520	Rs.
On first Rs. 1500	nil
On next Rs. 3500 at 9 pies	164-1
On next Rs. 3520 at -/1/9 pies	385-0
	549-1
Less proportionate amount of tax	
on Rs. 752 = $\frac{\text{Rs. } 549-1 \text{ anna} \times 752}{7520}$	= 54-15
Tax due for the year	494-2

Therefore monthly tax deduction will be—

$$\text{Rs. } 494-2\text{as.} \div 12 = 41-3\text{as.}$$

(2) If Shri H. P. Modi contributes 10 per cent. of his salary towards an official provident fund (the employer also contributing an equal amount) the monthly tax deduction will be calculated as follows:—

Taxable income	Rs. 7520
Exempted income:—	
P. F. Contributions 940	
Ins. Premium 640	1580
(Limited to 1/6th of total income)	Rs. as.
Tax on Rs. 7,520	549-1
Less proportionate amount of tax on 1580	115-6
Tax due for the year	433-11
Monthly tax deduction Rs. 433-11as. $\div 12$	= Rs. 36-2as.

Deduction of tax from interest on securities.—Only income tax (and not super tax), at maximum rate, is deducted at source from interest on securities, by the person responsible for paying the interest. Income-tax is not deducted at source from interest on Treasury Bills. Dividend on shares of the Reserve Bank is treated like interest on securities for the purposes of this section. The person deducting income tax at source pays the amount to the credit of the Central Government on behalf of the person from whose income deduction is made. The gross amount of interest is included in the total income of the person and credit is given in his assessment of the amount of tax deducted at source. If the assessee's total income is not liable to tax or if the amount of tax due from him is less than the amount already deducted from his interest on securities, he is entitled to refund.

If the assessee applies to the income-tax Officer, and satisfies him, that his total income for the year will be below the taxable limit or will be such as would be liable to tax at a lower rate, the Income-tax Officer may issue a certificate that either no tax be deducted from his interest on securities or tax be deducted at a lower rate, as the case may be.

Deduction of tax from other interests and other sums payable to non-residents—When interest, other than interest on securities, or other sums chargeable to tax under the provisions of this Act are to be paid to non-residents, the person who makes such payments must deduct income-tax thereon at the maximum rate, unless the person paying it is himself liable to pay income tax as an agent. He should also deduct super-tax on the amount by which the total amount of such payments exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

Deduction of super-tax from dividends payable to non-residents.—If the Income-tax Officer is satisfied that the total world income of a non-resident shareholder of a company is such an amount which is chargeable to super-tax he may direct

the principal officer of the company to deduct from his share of dividend super-tax at a rate determined by him. If no such instructions are received from the Income-tax Officer the principal officer of the company may deduct super-tax chargeable on the grossed up amount of dividend.

SECTION 18A.

ADVANCE PAYMENT OF TAX.

(1) (a) In the case of income in respect of which provision is not made under Section 18 for deduction of income-tax at the time of payment, the Income-tax Officer may, on or after the 1st day of April in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to one-quarter of the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed, if that total income exceeded six thousand rupees. Such income-tax and super-tax shall be calculated at the rates in force for the financial year in which he is required to pay the tax, and shall bear to the total amount of income-tax and super-tax so calculated on the said total income the same proportion as the amount of such inclusions bears to his total income or, in cases where under the provisions of subsection (1) of section 17 both income-tax and super-tax or super-tax are chargeable with reference to the total world income, shall bear to the total amount of income-tax and super-tax which would have been payable on his total world income of the said previous year had it been his total income the same proportion as the amount of such inclusions bears to his total world income :

Provided that, where the previous year of the assessee in respect of any source of income ends after the 31st

day of December and before the 30th day of April, the order in writing issued by the Income-tax Officer requiring the payment of income-tax and super-tax on that source of income shall substitute for the four quarterly payments hereinbefore specified, three payments of equal amount to be made on the 15th day of September, 15th day of December and the 15th day of March, respectively:

Provided further that, if the assessee is a partner of a registered firm and an assessment of the firm has been completed for a previous year later than that for which the assessee's last assessment has been completed, his share in the profits of the firm shall, for the purposes of this sub-section, be included in his total income on the basis of the latest assessment of the firm :

Provided further that, if after the making of an order by the Income-tax Officer and before the 15th day of February of the financial year an assessment of the assessee or of the registered firm of which he is a partner is completed in respect of a previous year, later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date, or in equal instalments on the specified dates if more than one, falling after the date of the amended order, the tax computed on the revised basis as reduced by the amount, if any, paid in accordance with the original order; but if the amount already paid exceeds the tax determined on the revised basis, the excess shall be refunded.

(b) If the notice of demand issued under section 29 in pursuance of the order under clause (a) of this sub-section is served after any of the dates on which the instalments specified therein are payable, the tax shall be

payable in equal instalments on each of such of those dates as fall after the date of the service of the notice of demand, or in one sum on the 15th day of March if the notice is served after the 15th day of December.

(2) If any assessee who is required to pay tax by an order under sub-section (1) estimates at any time before the last instalment is due that the part of his income to which that sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer an estimate of the tax payable by him calculated in the manner laid down in sub-section (1) on that part of his income for such period, and shall pay such amount as accords with his estimate in equal instalments on such of the dates specified in sub-section (1) (a) as have not expired or in one sum if only the last of such dates has not expired.

Provided that the assessee may send a revised estimate of the tax payable by him before any one of the dates specified in sub-section (1) (a) and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments.

(3) Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following is likely to exceed six thousand rupees, send to the Income-tax Officer an estimate of the tax payable

by him on that part of his income to which the provisions of section 18 do not apply of the said previous year calculated in the manner laid down in sub-section (1), and shall pay the amount. on such of the dates specified in that sub-section as have not expired, by instalments which may be revised according to the proviso to sub-section (2).

(4) Where part of the income to which sub-section (1), (2) or (3) applies consists of any income of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's account before any of the quarterly instalments of tax become due, he may defer payment of tax on that part of his income to the date on which such income would be normally received or adjusted and if he does so he shall communicate to the Income-tax Officer the date to which such payment is deferred :

Provided that if the tax of which the payment is deferred is not paid within fifteen days of the date on which such income or part thereof is received or adjusted by the payer in the assessee's account, the tax shall be payable with six per cent. simple interest per annum from the date of such receipt or adjustment to the date of payment of the tax.

(5) The Central Government shall pay on any amount paid under this section simple interest at two per cent. per annum from the date of payment to the date of the provisional assessment made under section 23-B, or if no such assessment has been made, to the date of the assessment (hereinafter called the 'regular assessment') made under section 23 of the income, profits and gains of the previous year for an assessment for the year

next following the year in which the amount was payable :

Provided that on any portion of such amount which is refunded under the foregoing provisions of this section interest shall be payable only up to the date on which the refund was made.

(6) Where in any year an assessee has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate, and the tax so paid is less than eighty per cent. of the tax determined on the basis of the regular assessment, so far as such tax relates to income to which the provisions of section 18 do not apply and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made, simple interest at the rate of six per cent. per annum from the 1st day of January in the financial year in which the tax was paid up to the date of the said regular assessment shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent. :

Provided that where a provisional assessment is made under Section 23 B, interest shall be calculated in accordance with the foregoing provision up to the date on which the tax as provisionally assessed is paid, and thereafter interest shall be calculated at the rate aforesaid on the amount by which the tax as so assessed (in so far as it relates to income to which the provisions of section 18 do not apply) falls short of the said eighty per cent. :

Provided also that, where, as a result of an appeal under section 31 or section 33 or of a revision under section 33 A or of a reference to the High Court under

section 66, the amount on which the interest was payable under this sub-section has been reduced the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded together with the amount of income-tax that is refundable :

Provided further that where a business, profession or vocation is newly set up and is assessable on the income, profits and gains of its first previous year in the financial year following that in which it is set up, the interest payable shall be computed from the 1st day of April of the said financial year.

(7) Where, on making the regular assessment, the Income-tax Officer finds that any assessee has —

(a) under sub-section (2) or under sub-section (3) underestimated the tax payable by him and thereby reduced the amount payable in any of the first three instalments, or

(b) under sub-section (4) wrongly deferred the payment of tax on a part of his income, he may direct that the assessee shall pay simple interest at six per cent. per annum, in the case referred to in clause (a) for the period during which the payment was deficient on the difference between the amount paid in each such instalment and the amount which should have been paid having regard to the aggregate tax actually paid under this section during the year, and in the case referred to in clause (b) for the period during which the payment of tax was wrongly deferred on the amount of which the payment was so deferred :

Provided that for the purposes of this sub-section any instalment due before the expiry of six months from the commencement of the previous year in respect of

which it is to be paid shall be deemed to have become due fifteen days after the expiry of the said six months.

(8) Where, on making the regular assessment, the Income-tax Officer finds that no payment of tax has been made in accordance with the foregoing provisions of this section, interest calculated in the manner laid down in sub-section (6) shall be added to the tax as determined on the basis of the regular assessment.

(9) If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee—

(a) has furnished under sub-section (2) or sub-section (3) estimates of the tax payable by him which he knew or had reason to believe to be untrue, or

(b) has without reasonable cause failed to comply with the provisions of sub-section (3).

the assessee shall be deemed, in the case referred to in clause (a), to have deliberately furnished inaccurate particulars of his income, and in the case referred to in clause (b), to have failed to furnish the return of his total income; and the provisions of section 28, so far as may be, shall apply accordingly:

Provided that the amount of penalty leviable shall in the case referred to in clause (a), be a sum not exceeding one-and-a-half times the amount by which the tax actually paid during the year under the provisions of this section falls short of the tax that should have been paid by the assessee under sub-section (1) or eighty per cent. of the tax determined on the basis of the regular assessment as modified in the manner provided in sub-section (6), whichever is the less, and, in the case referred to in clause (b), one-and-a half times the said eighty per cent.

(10) (a) If any assessee does not pay on the specified dates any instalment of tax that he is required to pay under sub-section (1) and does not, before the date on which any such instalment as is not paid becomes due, send under sub-section (2) an estimate or a revised estimate of the tax payable by him, he shall be deemed to be an assessee in default in respect of such instalment or instalments

(b) If any assessee has sent under sub-section (2) or sub-section (3) an estimate or a revised estimate of the tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in sub-section (1), he shall be deemed to be an assessee in default in respect of such instalment or instalments;

Provided that the assessee shall not, under clause (a) or (b), be deemed to be in default in respect of any amount of which the payment is deferred under sub-section (4) until after the date communicated by him to the Income-tax Officer under that sub-section.

(11) Any sum other than a penalty or interest paid by or recovered from an assessee in pursuance of the provisions of this section shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the financial year next following the year in which it was payable and credit therefor shall be given to the assessee in the regular assessment.

(12) Any income chargeable under the head "capital gains" shall not be taken into account for any of the purposes of this section.

According to the provisions of the Indian Income-Tax Act 1918, tax was paid by all assesseees on their income during the same financial year in which the income accrued, arose or was

received. A provisional assessment was made on the basis of estimate of the total income of the assessee for that year and was finalized after the close of the year when the actual income was known. Side by side with the finalising of the assessment of the previous year provisional assessment for the next year was made, and this process was repeated every year.

This method was changed by the present Act of 1922, according to which tax is charged for the current financial year on the basis of the income of the assessee during the previous year. This new system saved the Income-tax Department of a large amount of unnecessary work of first making a provisional assessment and then adjusting the same next year on the basis of actual income. According to the present system tax is not charged from an assessee in the first year of his getting a taxable income. On the other hand in the last year of his getting an income which is more than the minimum chargeable to tax he shall have to pay tax either twice or till one year after that year.

Indian Income-Tax (Amendment) Act, 1944, introduced the new section 18A which lays down a scheme, for advance payment of tax by all assesseees whose total income liable to tax (but not liable to deduction of tax at source under section 18) exceeds Rs. 6,000. This section has been framed on the same lines as the section in respect of "Pay As You Earn" method in English Income-tax Act. There are two distinct advantages of such a scheme—(i) The Government is able to get money earlier, and (ii) The Government gets tax as the assessee earns the income and is thus saved from the risk of loss of tax due to assessee's inability to pay on account of subsequent losses etc.

According to the provisions of this section the Income tax Officer may, on or after the first day of April in each financial year, by order in writing require an assessee to pay income tax and super-tax, in advance, on his estimated income

for the year, other than the income on which tax is deducted at source under the provisions of Section 18. The tax is to be paid in four equal quarterly instalments—on the 15th June, 15th September, 15th December and 15th March. The income for this purpose shall be estimated on the basis of his total income of the latest previous year in respect of which he has been assessed, and the rates at which tax will be calculated will be the rates in force for the financial year in which he is required to pay. If due to certain reasons the income-tax Officer is not able to give the above notice in time, and therefore, one or more dates of the quarterly payments have passed, the whole amount of tax will be payable by the assessee in equal instalments on the dates of quarterly payments falling after the service of the notice. If the notice is served after the 15th of December, the whole amount will be payable in one single instalment on 15th March.

Next year a regular assessment shall be made according to provisions of section 23 in respect of this year's income and the amount of tax paid in advance shall be adjusted. On the instalments of tax paid in advance under this section simple interest at 2 per cent. is allowed by the Government to the assessee from the dates of their payments to the date of regular assessment.

If any time before the payment of the last instalment an assessee feels that his income during the current financial year is likely to be less than his income as per his last completed assessment, and, therefore the amount of tax which he is required to pay by the Income-tax Officer under Section 18A (1) is more than the tax which will ultimately be due from him in respect of the income of this year, he can make his own estimate of the income and pay, or adjust, tax accordingly. In such a case he is required to send to the Income tax Officer in prescribed form a copy of his estimate.

If on the basis of his own estimate an assessee pays no tax, in advance, in respect of the current year, or the aggregate

amount of tax paid by him falls short of 80 per cent. of the actual tax determined on regular assessment (excluding any difference due to the tax on income which was liable to deduction of tax at source and any difference due to changes in the rates of tax) he will be required to pay simple interest at 6 per cent. per annum from 1st January in the financial year in which the tax was paid to the date of regular assessment, on the amount by which tax paid falls short of the 80 per cent. If on his own estimate an assessee pays less amount of tax in the first three instalment and he adjusts the deficiency in the last instalment he may be required by the Income tax Officer to pay simple interest at 6 per cent. per annum on the amounts by which the earlier payments were deficient and for the period for which they remained deficient.

Penalties.—In addition to the penal interest an assessee may be required by the Income-tax Officer to pay a penalty also if in the course of regular assessment he is satisfied that the assessee knowingly submitted a wrong estimate of his income with a view to avoid payment in advance of whole or part of tax due from him under Section 18 A. The amount of penalty may be one and a half times the amount by which the tax actually paid falls short of the amount of tax that he is required to pay under section 18 A (1) or 80 per cent. of the tax determined on regular assessment, whichever is less. The penal interest is charged with the object that the assessee should be careful in making his own estimate of income and further penalty is imposed if he deliberately makes a falls estimate.

SECTION 19

PAYMENT IN OTHER CASES

In the cases of Income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, income-tax shall be payable by the assessee direct.

In all cases where provision is not made for deduction of tax at source under section 18, the tax shall be payable by the assessee direct.

SECTION 19A

SUPPLY OF INFORMATION REGARDING DIVIDENDS.

The principal officer of every company which is an Indian company or a company which has made such effective arrangements as may be prescribed for the declaration and payment of dividends in the taxable territories shall, on or before fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of share holders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.

The object of this section is to provide information to the Income-tax Department so that shareholders, and particularly non-resident share-holders, may not escape super-tax on dividends received by them. Failure to furnish this return is an offence punishable under section 51, and making false statement in the verification is an offence punishable under section 52.

Rule 42 of the Income-tax Rules lays down that a return shall be furnished by the Principal officer of a company under section 19 A in respect of a dividend or aggregate dividends if the amount thereof exceeds one rupee in the case of a shareholder which is a company and in respect of a dividend or aggregate dividends if the amount thereof exceeds Rs. 5,000 in the case of any other shareholder.

SECTION 20

CERTIFICATE BY COMPANY TO SHAREHOLDERS RECEIVING DIVIDEND

The principal officer of every company shall at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Benefit of the proportionate amount of income-tax paid by a company (at the maximum rate) is given to each shareholder in his individual assessment. In order that the shareholder may claim this amount in his assessment a certificate must be granted by every company to its shareholders.

SECTION 20A

SUPPLY OF INFORMATION REGARDING INTEREST

The person responsible for paying any interest not being "Interest on securities" shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than four hundred rupees as may be prescribed in this behalf, together with the amount paid to each such person.

As in Section 19 A, so in this Section the object is to provide information to the Income-tax Department indirectly so that recipients of interest may not escape tax on such receipts. Failure to comply with the requirements of this section is punishable under section 51 and making of false statement is punishable under section 52.

SECTION 21

ANNUAL RETURN

The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver in duplicate to be

delivered to the Income-tax Officer in the prescribed form and verified in the prescribed manner a return in writing showing –

(a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March or has received or to whom was due during the year ending on that day, from the authority, company, body, association or private employer, as the case may be any income chargeable under the head “salaries” of such amount as may be prescribed;

(b) the amount of the income so received or so due by each such person, and the time or times at which the same was paid or due, as the case may be;

(c) the amount deducted in respect of income-tax and super-tax from the income of each person.

The object of this section is to furnish to Income-tax Officer return of all employees who during the period of 12 months ending on the preceding 31 March were in receipt of an amount of salary which, together with the amount of salary due for but not paid in the year, is not less than Rs. 1,600, so that the employees whose salary income, together with other income, if any, is more than the maximum amount which is exempt from tax may not escape payment of tax. The return must be prepared in prescribed form and verified in the prescribed manner and must be delivered before the 1st of May. Failure to furnish this return is punishable under section 51 (c) of the Act. Any false statement made in the verification is an offence punishable under section 52.

SECTION 22

RETURN OF INCOME

(1) The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year:

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons.

(2) In the case of any person whose total income is in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer may serve a notice upon him requiring him to furnish, within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income and total world income during the previous year:

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-sec-

tion (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

(4) The Income-tax Officer may serve on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require:

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

(5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof.

Before the Indian Income-tax (Amendment) Act, 1939, came in force, the Income-tax Officer was required to give notice to each such person, in his jurisdiction, whom he thought had a taxable income in the previous year. The persons selected for serving the notice used to be—

- (1) all those who were assessed to income-tax in the previous year; and
- (ii) all such other persons who, in his opinion, had earned

in the previous year an amount of income which rendered them liable to tax.

The persons on whom notice was served were required to send, within a specified period of time (not being less than thirty days), to the Income-tax Officer, a return of their, 'total income' and 'total world income' during the previous year. In this way the responsibility of asking people to pay tax was that of the income-tax Officer and the persons who earned the income had no responsibility to give information about their income to the Income-tax Officer. The result was that a number of people whose income did not come to the knowledge of the Income-tax Officer used to escape tax and continued to do so year after year.

In order to get over this loss of revenue to the Government sub section (1) of this section provides for a public notice to be given by the Income-tax Officer requiring every person whose total income during the previous year exceeded the maximum amount which is exempt from payment of income-tax, to apply to him for a copy of form of return of income (free of cost), to complete the form and submit it to him within the prescribed period of time, being not less than 60 days. The notice must be given on or before 1st May each year by publication in the press as also by publication in the prescribed manner. According to the provisions of Rule 18 of the Income-tax rules a notice must be affixed to the notice board of the Income-tax Officer's office and of as many of the following offices or Courts situated within the Income-tax Officer's jurisdiction as may be practicable :—

1. All Head Post Offices and sub-Post Offices;
2. Courts of the District Judges, Subordinate Judges, Civil Judges and District Munsifs ;
3. Offices of the District Collectors, Deputy Commissioners, Divisional and Sub-Divisional Officers, Tahsildars, Mamlatdars and Mukhtiarkars.

The public notice to be given under this sub section should be in the form as laid down by Rule 18A of the Income tax Rules.

The effect of this public notice is that the responsibility is shifted from the Income-tax Officer to individual persons to find out for themselves whether they have a taxable income and if so to make return of their income accordingly. A person who without any reasonable cause fails to make a return in response to public notice is liable to penalty under Section 28.

Notwithstanding the obligation of every person whose total income is liable to tax to make a return of his income as provided by sub section (1) of section 22, the Income-tax Officer may serve on any person, whose total income in his opinion, is of such an amount as would render him liable to income-tax, a notice calling upon him to render a return of his total income and total world income.

When a person has been served with an individual notice he must file a return of his income even though his taxable income is below the taxable limit. Penalties for non compliance with the individual notice are :—

- (i) If the income is below the minimum amount liable to income-tax—penalty not exceeding Rs. 25;
- (ii) If the income is equal to, or more than, the minimum taxable amount—penalty in addition to the amount of income tax and super-tax, if any, payable by him, will be a sum not exceeding one-and-a-half times that amount.

If a registered firm fails to make a return under section 22 (2) the Income-tax Officer may cancel the registration of the firm.

Sub-section (3) of this section provides that a person who fails to make a return within the time specified in the notice, may do so any time before the assessment is made; or if after making the return he discovers that a mistake has been committed

in preparing the return filed by him he may file a revised return. This provision, of course, does not mean that he will avoid penalty for non-compliance with the requirements of sub-section (1) or (2) within the specified time. The advantage to him will be that his assessment will not be made under Section 23 (4) (Best Judgement Assessment) as would otherwise be done.

The Income tax Officer is empowered to call upon any person who has made a return under section 22 (1), or on whom a notice under Section 22 (2) has been served, to produce such accounts or documents as he may require. The Income-tax Officer cannot ask an assessee to produce books of accounts going back for a period of more than three years prior to the "previous year" on the profits of which the assessment is based. While the Income tax Officer has power to call for production of accounts and documents he has no power to compel the assessee to produce them. He cannot enter the premises of the assessee to inspect the accounts by force and if he does so the assessee can turn him out.

In the return of income of a business, profession or vocation the information regarding the place of business, names and addresses of partners, if any, and share of each partner in the profits must also be given.

SECTION 23

ASSESSMENT

(1) If the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under Section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2) or as soon afterwards as may be, the Income tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) If any person fails to make the return required by any notice given under sub-section (2) of Section 22 and has not made a return or a revised return

under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment and, in the case of a firm, may refuse to register it or may cancel its registration if it is already registered.

Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration.

(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4), as the case may be,—

(a) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined:

Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 24:

Provided further that when any of such partners is a person not resident in the taxable territories, his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if

it were assessed on him personally, and the sum so determined as payable shall be paid by the firm;

Provided also that if at the time of assessment of any partner of a registered firm, the Income-tax Officer is of opinion that the partner is residing in Pakistan, the partner's share of the income, profits and gains of the firm shall be assessed on the firm in the manner laid down in the preceding proviso and the sum so determined as payable shall be paid by the firm; and

(b) in the case of an unregistered firm, the Income-tax Officer may instead of determining the sum payable by the firm itself proceed in the manner laid down in clause (a) as applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm.

(6) Whenever the Income-tax Officer makes a determination in accordance with the provisions of subsection (5), he shall notify to the firm by an order in writing the amount of the total income on which the determination has been based and the appointment thereof between the several partners.

The word assessment in Income tax Law has been used at some places only for computation of income, while at others for computation of tax liability of the assessee. In certain cases the word has been used even for the whole procedure for imposing tax liability.

If the Income tax Officer is satisfied that the return filed by the assessee is complete and correct he may not ask for the personal presence of the assessee or for production by him of

any documents or accounts and may proceed to make the assessment and determine the tax payable by the assessee

If on the other hand the Income-tax Officer is not satisfied with the return as filed by the assessee he may issue a notice requiring the assessee to attend his office on a specified date and time and to produce evidence in support of his return. After examination of accounts and records and after hearing evidence in support of the return, if any, the Income tax Officer should assess the total income of the assessee and determine the amount of tax payable by him.

Best Judgment Assessment.—According to the provisions of sub-section (4) of this section the Income-tax Officer is empowered to make assessment to the best of his judgment in the following cases:—

- (i) Where the assessee has failed to make return of his income as required by individual notice under Section 22 (2) or has not made a return or revised return under Section 22 (3);
- (ii) Where he has failed to produce accounts as required by notice under Section 22 (4); and
- (iii) Where he has failed to attend the office of the Income-tax Officer or fails to produce evidence in support of the return filed by him, as required by notice under Section 23 (2)

In above cases, in the case of a firm, the Income-tax Officer may refuse to register it or may cancel its registration if it is already registered.

Best Judgment Assessment should not be made with a view to punish the assessee for non-compliance with the Income-tax Officer's orders. It should not be arbitrary. It must be based on reason and justice. In making the assessment the Income tax Officer must take into consideration all facts and material on record before him.

If it can be proved that the 'Best Judgment Assessment'

was made without an honest exercise of judgment the Commissioner of Income-tax may revise or review the judgment under the provisions of Section 33. If within one month of the issue of notice of demand based on 'Best Judgment Assessment' the assessee applies to the Income-tax Officer and satisfies him that by reasonable causes he was prevented from complying with the requirements of the notice, for non-compliance of which 'Best Judgment Assessment' was attracted, the Income-tax Officer should cancel the assessment and proceed to make a fresh assessment (Sec. 27). Under Section 30 an assessee can file an appeal to the Appellate Assistant Commissioner against the 'Best Judgment Assessment'. A reference can also be made to the High Court.

Assessment of registered firms: sub-sec. (5).—While an unregistered firm is assessed like an individual and tax due on its income is determined and recovered from the firm, in the case of a registered firm, or an unregistered firm treated as registered, the total income is assessed on the firm but tax on the income is not payable by the firm. The amount of income is divided between the partners and each partner's share is taxed in his hands along with his separate income. If share of profit of any partner in the firm is a loss it shall first be set off against his other income in the same year and then any unset off portion will be carried forward and set off against his share of profit from the same business in future years in accordance with the provisions of Section 24. Where one or more of the partners of a registered firm are non-residents in taxable territories, tax on their share of partnership profits is assessed on the firm and charged from it. The firm while paying their shares of profit to non-residents can deduct the amount of tax paid by it on their behalf.

Assessment Proceedings

Section 22 (1) provides for a public notice to be given by every Income-tax Officer to all assesseees in his jurisdiction directing them to get from his office a form of return of income, to

complete the same and to return it to him within a prescribed period of time. Notwithstanding the above notice the Income-tax Officer may, and in practice he actually does, serve individual notice [under section 22 (2)] on all such persons who in his opinion have a taxable income, asking them to render a return of their total income and total world income on the form sent along with the notice.

If any person fails to furnish the return within the time allowed, or having furnished the return discovers that some mistake has been committed by him in filling it he may furnish a return or a revised return, as the case may be, any time before the assessment is made. This will save the assessee from the operation of the 'best judgment assessment' under Section 23 (4), but will not save him from the penalty for failing to submit the return in time or submitting a false return originally.

On receipt of the return of income from the assessee either in compliance with notice under Section 22 (1) or 22 (2) the Income-tax Officer, if he considers necessary, may serve notice upon the assessee under Section 22 (4) requiring him to produce such accounts or documents as he may think necessary. If he is satisfied that the return is correctly prepared and no further information in connection therewith was needed he makes an assessment, which may be called a '*regular assessment*' by computing the taxable income and determining the amount of tax payable by, or refundable to, the assessee. On the other hand if the income-tax Officer is not satisfied with the information given in the return and feels that the presence of the assessee or production of evidence in support of the return was necessary he may serve notice on him under Section 23 (2) requiring him to attend his office or to produce or cause to be produced evidence in support of the return. The assessee may attend the Income-tax Officer's court personally or he may send his duly authorised agent. If the Income-tax Officer wishes that the assessee should attend personally he should issue a

notice to him under Section 37 of the Income-tax Act.

If—

- (i) the person fails to make the return in compliance with notice given to him under Section 22 (2), and has not made a return or revised return under Section 22 (3), or
- (ii) he fails to comply with all the terms of notice issued under Section 22 (1), or
- (iii) having made a return he fails to comply with all the terms of notice issued under Section 22 (2),

the Income-tax Officer has no complete and Satisfactory data before him on the basis of which he can proceed to make a regular assessment, and, therefore, makes a '*best judgment assessment*' as provided by sub-section 4) of Section 23, and issues a notice of demand under Section 29. In the case of a firm the Income-tax Officer may refuse to register it or may cancel its registration if it is already registered.

The '*best judgment assessment*' though of necessity should be arbitrary at least to some extent, the Income-tax Officer, as far as it lay in his power, should be just and fair in making it. In making guess of assessee's income he must act honestly and must utilize all knowledge and information in his possession and all the material on record before him. Because the assessee did not, or could not, comply with his orders regarding filing of return or supplying of information asked for, he should not feel annoyed and should not be vindictive. The object of the best judgment assessment should not be to punish the assessee.

If in making best judgment assessment the Income-tax Officer does not exercise necessary care and skill or if he acts dishonestly the Commissioner of Income-tax has power under Section 33 of the Act to revise or review the assessment. If within one month of the issue of notice of demand, based on best judgment assessment, the assessee applies to the Income-tax Officer and satisfies him that by reasonable causes he was

prevented from complying with the requirements of the notice, for non-compliance of which the best judgment assessment was attracted, the Income-tax Officer should cancel the assessment and should proceed to make a fresh assessment (Section 27). Under Section 30 an assessee can appeal to the Appellate Assistant Commissioner against the best judgement assessment.

Section 23B provides that any time after the receipt of return from an assessee (and pending the regular assessment) the Income-tax Officer may make a *Provisional Assessment* in a summary manner on the basis of his return. Under section 24-A the Income-tax Officer may make, at short notice, *Emergency Assessment* of persons who are likely to leave the country without intending to return. The assessment is made in respect of current year or part of the current year (up to the probable date of his departure) in addition to the assessments of the previous year or years in respect of which he has not already been assessed in the usual course.

Under section 3 of the Indian Income Tax Act the income of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually is assessable to income-tax.

Assessment of individuals—An individual means a single person or a human being. Every individual is assessed separately in his personal capacity even though he happens to be a member of other unit or units subject to tax, such as a shareholder in a company, a partner in a firm, a member of a Hindu undivided family or of any other association of persons. All his income whether earned individually or received as his share of income of other units (except from Hindu undivided family) of which he is a member is included in his total income for tax purposes. Share of income from Hindu undivided family whether taxed or not in the hands of the 'karta' of the family is not taxed in the hands of the individual member of the family nor it is included in his total income for rate purposes. Share of income

from unregistered firm or other association of persons which has already been taxed is exempt in the hands of the individual receiving it, but is included in his total income for rate purposes. Dividends received from companies (after being grossed up, if the profits of the company have been or will be taxed) are included in the total income of the individual and taxed in his hands, but credit is given to him of the proportionate amount of tax paid by the company on his share of dividends or in other words of the amount of difference between the gross amount and the net amount of dividend.

An individual is assessed to tax (both income-tax and super-tax) according to the rates of tax applicable during the current financial year and is granted earned income relief on all earned income included in his total income.

According to the provisions of Section 24B an executor, administrator or other legal representative of a deceased person is treated as the assessee for the purpose of assessment on the income of the deceased person. Section 40 provides for the assessment of guardians and trustees of minors, lunatics and idiots and agents of non-residents and Section 41 deals with the liability of Courts of Wards, Administrators General, Official Trustees, Receivers and Managers appointed by Courts etc.

Assessment of Hindu Undivided Families.—A Hindu undivided family is treated and taxed as a separate entity for income-tax purposes, and no account is taken of how that income is distributed amongst the individual members when such individual members are assessed to income-tax or super-tax in respect of their separate income. This applies even in cases where the amount of income of the Hindu undivided family is below the taxable limit and has therefore, not been subjected to tax in the hands of the manager of the family. A person may be entitled to share in the family income as a member because of his right to family property on partition or his right to maintenance out of the family income.

Where the income, profits and gains of a member of an

undivided Hindu family consist of his personal earnings and acquisitions by his own exertions, they must be treated as his personal income and not as joint family income, unless they flow from the employment in business or otherwise of the joint family property.

Jain and Sikh undivided families are treated as Hindu undivided families, unless in any particular case, the assessee claims that he should not be treated as such. Where such a claim is put forward it is for the assessee to prove the existence of some special custom or practice applicable to the family in question which would justify its not being treated as a Hindu undivided family.

The son of a Hindu (governed by any school of Hindu law) does not acquire by birth any interest in his father's self-acquired property. In respect of the income of such property the father is to be assessed as an individual.

In the case of Hindus not governed by the Dayabhaga law the son acquires by birth an interest in his father's ancestral property and therefore after the birth of a son the income from ancestral property is to be assessed as the income of a Hindu undivided family. According to the Dayabhaga law, however, the son does not acquire by birth any interest in ancestral property; his rights arise for the first time on his father's death. In the father's life time, therefore, the income from ancestral property is to be assessed as the income of an individual unless the father himself is a member of a coparcenary, (i. e., the father himself inherited the ancestral property along with a brother).

The income of a sole surviving male member of a Hindu undivided family governed by the Mitakshara law is to be assessed as his personal income if he has no son. The existence of a wife and daughter does not alter the position. Under the Dayabhaga law the position is different. According to that law a coparcenary is formed only when the inheritance opens and there must be two or more male heirs before a coparcenary can

be formed. But if any of these male coparcenars dies leaving surviving him a widow or a daughter that widow or daughter would be admitted into the coparcenary in the place of the deceased coparcenar. If, for example, a Hindu governed by Dayabhaga law dies leaving three sons A, B and C, the three sons A, B and C, inherit the property jointly and form a coparcenary (although each inherits a defined share) if before partitioning their shares, B dies leaving a widow BW, and C dies leaving a daughter CD, then A, BW and CD, will be members of the coparcenary originally formed by A., B and C. It will thus be seen that the Dayabhaga law differs from the Mitakshara in admitting females into the coparcenary in certain circumstances although they cannot originally form a coparcenary. A coparcenary is a FORTIORI a Hindu undivided family and the income from the coparcenary property will, according to the Dayabhaga law be assessable as the income of a Hindu undivided family notwithstanding that such coparcenary consists of only one male member and one or more female members.

The income from ancestral property of a Hindu (governed by any school of law) with no son but with a wife and / or daughters is assessable as the income of an individual.

The amendment Act of 1948 extends the exemption to allowances paid to junior members by the holder of an impartible estate belonging to a Hindu undivided family provided the amounts paid are includible in his income and are not payable under a contractual or other obligation. In the latter case the amounts paid would be deductible from the income of the holder and would be chargeable in the hands of the member who receives the amounts.

According to the provisions of Section 4 A (b) a Hindu undivided family is resident in the taxable territories unless the control and management of its affairs is situated wholly without the taxable territories, that is to say if part even of its control and management is done from within the taxable territories the family will be treated as resident. It will be deemed to be

ordinarily resident in the taxable territories if its manager is ordinarily resident in the taxable territories. (Section 4B.)

Life insurance premium paid by a Hindu undivided family to effect an insurance on the life of any male member of the family or the wife of any such member provided it does not exceed one-sixth of the total income or Rs. 12,000, whichever is less, is exempted from payment of tax.

Assessment after Partition.

If at the time of assessment a member of a Hindu family claims that the family has been divided and that he should be assessed individually in respect of his share of income of the family, the Income-tax Officer should make an inquiry about it and if satisfied that partition has actually taken place should record an order to that effect.

For further particulars in respect of assessment of Hindu undivided family after partition refer to Section 25A.

Income of Impartible Estate.

An impartible estate is one which cannot be partitioned between the several members of the family. According to Mitakshara Law the eldest son inherits the property of his father and the income from that property is taxed in his hands in his absolute right and not as the representative of Hindu undivided family. There have been conflicting decisions in the past with regard to taxation of income received by other members of family out of the income of the impartible estate. But by the income-tax (Amendment) Act 1948, it has finally been settled that no distinction should be made in respect of receipt by a member of an undivided family whether the property from which the income arises is partible or impartible so that now junior members of a Hindu undivided family receiving allowances out of income of impartible property of the family can claim exemption under Section 14 (1) in the same way as members of other undivided family can claim.

Assessment of Firms.

Firm here means a partnership firm as defined by the

Indian Partnership Act, 1932; [refer clause (6B) of Section 2].

In order to form a legal partnership for the purposes of Income-tax law there must be an agreement entered into between the persons who decide to be partners, the agreement must be to share profits of the business and the business must be carried on by all the partners or by some of them acting as agents of all. Members of Hindu undivided family carrying on a family business do not form a partnership. In the same way joint owners of property (taxable under Section 9) are not regarded as partners in a firm. A person, merely on the ground that he shares in the profits of a business (even though his share depends on earning of profits by the firm and varies with its amount) cannot be treated as partner whatever may be the consideration for sharing in the profits—it may be that he has advanced money to the firm as loan and in lieu of interest receives a share of the profits, or he renders some service to the firm as an agent or convassor, or has transferred his goodwill to the firm. A widow or a minor child receiving an annuity out of the profits of a firm in which the husband of the widow or father of the child was a partner or an employee, does not become partner in the firm.

A minor child is incompetent to enter into any contract and, therefore, legally he cannot be a partner in a firm but he can be admitted to the benefits of the partnership by the consent of other partners. A minor can, therefore, be a partner in a firm only when there are at least two other partners. There cannot be a partnership between a minor child and another person who acts as guardian of the minor. A firm cannot legally enter into partnership with another firm or person or persons but on account of certain special considerations such partnerships or associations are formed and the Income tax authorities cannot ignore them. A Hindu undivided family through its 'karta' can enter into partnership with others, but the 'karta' of the family in his individual capacity, cannot enter into

partnership with the family.

For the purposes of income-tax a firm may be a registered firm (as per the provisions of Section 26A) or it may be an unregistered firm. The methods of taxing the two classes of firms are different.

Assessment of Unregistered Firms

An unregistered firm is assessed, both in respect of income-tax and super-tax, just like an individual. No tax is payable by the firm if its total income is below the taxable limit. An unregistered firm is entitled to earned income relief in respect of earned income included in its total income. An unregistered firm can set off its loss under one head against its income under other heads and can also carry forward the unset off portion of business loss to be set off against income from the same business in future years under Section 24 (2). A partner of an unregistered firm, however, cannot set off his share of firm's loss against his other income.

When the profits of an unregistered firm are divided among its partners, the partners are not liable to pay tax on their shares of firm's profit but the same must be included in their total income for the purpose of determining the rate at which they should pay tax on the rest of their income. If the total income of a partner (including his share of firm's income) is below the taxable limit the partner will not be entitled to refund on his firm's share of profit which has been subjected to tax in the hands of the firm. If the profit of an unregistered firm has not been taxed in hands of the firm because it is below the taxable limit each partner's share in the profit of the firm will be included in his total income and will be liable to tax in his hands. In such a case the partner will be entitled to earned income relief if he has been actively engaged in the conduct of the business of the firm.

When the business, profession or vocation carried on by a

firm has been discontinued or the firm has been dissolved every person who was, at the time of such discontinuance or dissolution, a member of the firm is jointly and severally liable to any tax that may be due from the firm.

Assessment of Registered Firms.—

A registered firm itself is not required to pay tax (income-tax or super tax) on its profits. In the assessment proceedings of a registered firm the income-tax officer simply determines the taxable income in accordance with the provisions of Section 10. In computing taxable income of the firm any payments by way of interest, salary, commission or remuneration made by the firm to any of its partners are not allowed to be deducted from its gross profit, Section 10 (4) (d). The profit of the firm so computed is divided between the partners and each partner's share of firm's profits is taxed in his hands along with his other income. If tax assessed on a partner cannot be recovered from him the proportion of tax attributable to firm's share of income, included in his total income, can be recovered from the firm. In case there is a non-resident partner in a registered firm tax on non-resident partner's share of firm's profit is assessed on the firm itself and the rate of tax is the same as would be applicable if that income was assessed on the partner personally.

Out of the profits of the firm as computed above the partners who are entitled to any interest on capital, salary, commission etc. are first allotted in respect thereof and then the balance of the amount is divided between them in their profit sharing proportions. The following illustration will make it clear:—

Illustration:

The Profit and Loss Account of the Registered firm of Messrs Ram, Shiam and Govind who share profit and loss in the proportion of $\frac{1}{2}$, $\frac{1}{3}$ and $\frac{1}{6}$ respectively, is given below.

Profit and Loss Account.

	Rs.	Rs.
Sundry Trade expenses	1,10,000	Gross Profit 3,20,000
Interest on capital—	Rs.	
Ram ...	7,000	
Shiam ...	5,000	
Govind ...	<u>3,000</u>	15,000
Salary to Shiam		15,000
Commission to Ram		30,000
Net Profit—		
Ram ...	75,000	
Shiam ...	50,000	
Govind ...	25,000	1,50,000
		<u>3,20,000</u>
		3,20,000

The firm's total income and each partner's share in it, to be taxed in his hands alongwith his other income, will be computed as follows:—

Net profit as per Profit and Loss Account	Rs.
	1,50,000
<i>Add</i> Less payments not allowed—	Rs.
Interest on partners' capital	15,000
Salary to one of the partners	15,000
Commission to another partner	<u>30,000</u>
	60,000
Taxable profit of the firm ...	<u>2,10,000</u>

Alternatively it may be calculated as

follows:— Gross profit	3,20,000
Less admissible expenses	<u>1,10,000</u>
Taxable profits of the firm	<u>2,10,000</u> ✓

Distribution of profits among the partners—

	Ram	Shiam	Govind	Total
	Rs.	Rs.	Rs.	Rs.
Interest on capital	7,000	5,000	3,000	15,000
Salary to Shiam	...	15,000	...	15,000
Commission to Ram	30,000	30,000
Total	37,000	20,000	3,000	60,000
Share in profits	<u>75,000</u>	<u>50,000</u>	<u>25,000</u>	<u>1,50,000</u>
Total	1,12,000	70,000	28,000	2,10,000

Loss of registered firms is divided between the partners. Each partner can set off his share of firm's loss against his other income in that year and the unset off balance, if any, can be carried forward as a business loss and can be set off against his share of profit of the same firm in future years—Section 24 (2).

If a partner is actively engaged in the conduct of the firm's business he can claim earned income relief on his proportion of the profit. When a non-resident partner's share of profit is assessed on the firm earned income relief can be granted provided the non-resident was actively engaged in the conduct of the firm's business.

If the Income-tax Officer comes to know that for the purpose of their income-tax returns the partners of a registered firm have divided the profit of the firm in a proportion other than their real profit sharing proportion so that any one or more of them have returned their income below the real amount, the Income-tax Officer can substitute correct amount of income of such partner or partners and assess them on such enhanced incomes, in addition he can impose penalty on these partners under Section 28 (2), and the other partners who have returned their income more than the real income cannot claim any adjustments in their assessments.

Unregistered Firms Treated as Registered

Some time it may be advantageous for the Partners that the firm of which they are members should remain unregistered. The amount of tax on the total income of the firm as (unregistered) comes to be less than the amount of tax the partners would be required to pay on their shares if the same are added to their individual income (as in the case of registered firm). This would happen when the total income of the individual partners is much higher than the total income of the firm. Section 23 (5) (b) of the Income-tax Act lays down that the Income-tax Officer may treat an unregistered firm as a registered one and tax it as such if in his opinion the aggregate

amount of tax including super-tax, if any, payable by the partners under such a procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm was assessed as an unregistered firm.

For assessment of firms after change in Constitution, if any, refer to Section 26, and for assessment of firms after business has been discontinued refer to Section 44.

Assessment of Associations of Persons

Association of persons means a group of persons. The persons who form the association may be individuals, firms, corporate bodies or undivided families. Two firms, a firm and an individual, a firm and an undivided family, an individual or a firm or an undivided family and a company, or other such combinations do not form partnerships. Such combinations are taxed as associations of persons. Co-owners of property where their shares are definite and ascertainable are not assessed as an association of persons but the share of each such person in the income from property is included in his total income and taxed in his hands Section 9 (3).

An association of persons is taxed, both in respect of income-tax and super-tax just like an individual. Share of income of each member of the association is dealt with in his individual assessment in the same way as share of profit of an unregistered firm is dealt within the assessment of a partner.

The association is entitled to earned income relief in respect of all its earned income included in its total income and the members of the association are not entitled to it in respect of their share of profits of the association which is included in their total income for rate purposes only.

When the business or an association has been discontinued or the association has been dissolved every person who was at the time of such discontinuance or dissolution a member of the association is jointly and severally liable to pay any tax that may be due from the association.

Assessment of Local Authorities

A local authority is defined as a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund.

Before the 1939 Amendment of the Income-tax Act, no part of the income of a local authority was liable to income-tax. Since some local authorities are sometimes engaged in certain trading activities, by the Amendment Act of 1939 it is provided that such income of a local authority as is derived from trade or business carried on by it, so far as that income is not income arising from the supply of commodity or service within its own jurisdictional area, should be subjected to tax. Accordingly if a municipal board supplies water or electricity to persons living outside its jurisdictional area the income of such activities of the board is liable to tax.

On all such income of a local authority income-tax and super tax are charged at rates as prescribed by the Finance Act of each year. The Finance Act of 1951 lays down the following rates:—

Income-tax—rate four annas in the rupee plus sur-charge one-twentieth of the rate specified above.

Super-tax—rate two and a half annas in the rupee plus sur-charge three pies in the rupee.

Assessment of Companies

A 'company' has been defined under section 2 (6) of the Indian Income-tax Act for which pp.11-13 of this Book may be referred.

Residence of a company is determined according to the provisions of Section 4 A and 4 B. A company is resident if it is wholly controlled and managed from the taxable territories or if a major portion of its income actually arises in the taxable territories. In the case of a company distinction between 'resident' and 'ordinarily resident' is not made. If a company is resident it is also ordinarily resident.

As regards assessment every company is assessed both to income-tax and super-tax. Super-tax in the case of a company is a corporation tax charged in view of special privileges granted to it in the form of corporate finance and limited liability. Super-tax is not paid by a company on behalf of its shareholders (as is the case with regard of income-tax) and therefore it is not taken into consideration while computing the amount of super tax payable by an assessee on his total income which includes income from dividends. An assessee is not entitled to refund of super-tax paid by the company in respect of his dividend in case his total income is below the maximum amount which is exempt from payment of super-tax. Following are the distinctive features of assessment of companies in respect of income tax and super-tax:—

(1) A company's income is taxable irrespective of the amount. An individual is charged to income-tax only if his income is more than Rs. 3,600 and to super-tax if it is more than Rs. 25,000 whereas a company is charged to both income-tax and super-tax irrespective of the amount of its income. It will have to pay both income-tax and super-tax even if its income is Rs. 2,000.

(2) According to Finance Acts a company's income is not taxed on 'slab system'. The entire income of a company is taxed at a uniform rate of income-tax and super-tax. Following are the rates for the assessment of 1951-52 as fixed by the Finance Act of 1951:—

Income-tax

On whole of the total income at the rate of four annas in the rupee plus one-twentieth of the amount so worked out, as surcharge. Against the tax so calculated a rebate of one anna per rupee will be allowed on the undistributed profit remaining after deducting from total income—

- (i) amount of any dividend (including dividends payable at fixed rate) declared in respect of the whole or part of the previous year, provided no order has

been made under sub-section (1) of Section 23-A;

(ii) amount if any, exempt from income-tax; and

(iii) seven annas in the rupee of the total income.

Illustration (1)

		Rs.
(i) Total income of a company		80,000
(ii) Out of above, donations for approved charitable purposes		4,000
(iii) Dividend declared in respect of previous year		30,000
Income-tax payable by the company will be worked out as follows:—		
	Rs.	Rs.
Total income	...	80,000
Loss—(i) Dividends declared	30,000	
(ii) Donations for charitable purposes	4 000	
(iii) Seven annas per rupee of total income	35,000	69,000
Undistributed profit on which rebate of Rs. 687/8/- (at the rate of one anna per rupee) will be allowed		
	...	11,000
Income-tax on the total income of Rs. 80,000	...	Rs.
Tax at 4 annas per rupee	Rs. 20,000	
add one-twentieth surcharge	1,000	21,000
Less rebate on undistributed profit		687-8
Less proportionate exemption on Rs. 4,000, donations for charitable purposes	Rs. 20,312-8	
	Rs. 1,015-10	
Income-tax payable	Rs. 19,296-14	

(2) If in the above illustration dividend declared is Rs. 41,000, instead of Rs. 30,000, there will be no balance of undistributed profit left after deducting from the total income of Rs. 80,000—

(i) amount of dividend declared	41,000
(ii) donations for charitable purposes	4,000
and (iii) seven annas per rupee of total income	35,000

Income-tax payable will be worked out as follows :— Rs.

Income tax on Rs. 80,000 at 4 annas per rupee	
plus one-twentieth surcharge	21,000
Less proportionate exemption on Rs. 4,000 donations for charitable purposes	1,050
	<u>Rs. 19,950</u>

(3) If on the other hand the amount of dividend declared in respect of the previous year exceeds the total income minus seven annas in the rupee on the total income minus the amount, if any, exempt from income-tax, an additional income-tax will be charged which will be equal to the sum, if any, worked out as follows :—

the amount at the rate of five annas in the rupee on the amount of excess dividend minus the amount of tax actually borne by this amount included in the income of the previous year or years out of the undistributed portion of which the excess dividend has been paid.

In the above illustration if the amount of dividend declared is Rs. 50,000, the tax payable will be determined as follows:—

		Rs.
Total income	...	80,000
Less (i) seven annas in the rupee on the above	Rs. 35,000	
(ii) exempted income	<u>4,000</u>	<u>39,000</u>
		Rs. 41,000
Dividend declared	...	<u>Rs. 50,000</u>
Excess dividend declared		Rs 9,000

Out of the undistributed profits of the preceeding year (supposing 1949-50) which bore tax of four annas in the rupee less one anna rebate.

Income-tax on the total income of Rs. 80,000	Rs.
at 4 annas per rupee plus 5 per cent. surcharge	21,000
Additional tax on excess dividend—	Rs.
Income tax on Rs. 9,000 at 5 as	2,812-8

Less income-tax on Rs. 9,000 at preceeding year's rate (four annas minus one annas rebate)		
—3 as per rupee	1,687-8	1,125-0
	<hr/>	<hr/>
Less proportionate relief on Rs. 4,000—		22.125
donations for charitable purposes		1,106-4
		<hr/>
	Rs.	<u>21 018-12</u>

According to the provisions of Section 49 B, benefit of proportionate amount of income tax paid by the company is granted to each share-holder who is paid dividend out of company's profit. While assessing the individual share-holder the amount of dividend received by him is grossed up and included in his total income and credit is given to him of the amount of income-tax appropriate to his share of dividend (gross amount of his dividend less the net amount of it actually received by him). If the total income of a shareholder, including the income from dividend, is below the taxable limit, is entitled to refund of the amount of income tax appropriate to his share of dividend.

According to Finance Act of 1951, the rate of super-tax on company's profits is four annas and nine pies per rupee, subject to the following rebate—

(i) at the rate of three annas per rupee of the total income in the case of any company which—

(a) has made the prescribed arrangements for the declaration and payment in the taxable territories of India of the dividend payable out of such profits and for the deduction of super-tax from dividends in accordance with the provisions of sub-section (3 D) of (3 E) of section 18, and

(b) is a public company with total income not exceeding Rs. 25,000.

(ii) at the rate of two annas per rupee of the total income in the case of any company which satisfies condition (a) but not condition (b), of the preceding clause; and

(iii) at the rate of one anna per rupee of the total income in the case of any company which, not being entitled to a rebate under either of the preceding clauses, is—

(a) a public company whose shares were offered for sale in a recognised stock exchange at any time during the previous year, or

(b) a company all of whose shares were held at the end of the previous year by one or more such public companies as aforesaid:

Provided further that the super-tax payable by a company the total income of which exceeds Rs. 25,000 shall not exceed the aggregate of—

(a) the super-tax which would have been payable by the company if the total income had been Rs. 25,000, and

(b) half the amount by which its total income exceeds Rs. 25,000.

In the above illustration No. (1) for calculating income-tax payable, also calculate super-tax payable.

A rebate of two annas per rupee will be allowed because this case is covered by condition (ii) satisfying clause (a) but not clause (b) because the amount of profit exceeds Rs. 25,000, it being Rs. 80,000.

super tax payable will be—

Four annas nine pies per rupee	Rs.
on Rs. 80,000	23,750
Less rebate of two annas per rupee	10,000
	<hr/> 13,750 <hr/>

Note:—Donations for charitable purposes, in the case of a company, are exempted from payment of income-tax but not super-tax

2. The total income of a public company for the year ended 31 st December 1950 is Rs. 26,000 and the dividend declared in the taxable territories on account of the year 1950 amounted to Rs. 14,000. Work out the amount of tax payable by the company for the assessment year 1951-52.

Solution:

	Rs.	Rs.
Total income of the company		26,000
Less : seven annas in the rupee	11,375	
(b) amount of dividend	14,000	25.7
Undistributed profit (on which rebate of Rs. 39-1 aana at the rate of one aana per rupee will be allowed)		Rs. 625
	Rs.	<u> </u>
Income tax on Rs. 26,000 at 4 annas	6 500	
plus 5 per cent surcharge	325	Rs. 6,825
Less rebate on undistributed profit		Rs. 39-1
Income-tax payable		<u>Rs. 6,785-15</u>
Super-tax on Rs. 25,000 at 4 annas 9 pies	Rs. 7,421-14	
Less rebate of 3 annas per rupee on Rs. 25,000		Rs. 4,687-8
		Rs. 2,734-6
Add half of the income in excess of Rs. 25 000		Rs. 500-
Super tax payable		<u>3,234-6</u>

Note.—Since the income of the company exceeds 25,000, clause (ii) above should apply and super-tax should be worked out as follows—

at 4 annas 9 pies on Rs. 26,000	Rs. 7,718-12
less rebate at 2 annas on Rs. 26,000	Rs. 3,250-0
Super-tax	<u>Rs. 4,468-12</u>

because this amount is more than the amount worked out above on the basis of the proviso, this amount will not be charged, the lesser of the two is charged.

Total tax payable.—

Income-tax	Rs. 6,785-15
Super-tax	Rs. 3,234-6
Total	<u>Rs. 10,020-5</u>

SECTION 23A.

POWER TO ASSESS INDIVIDUAL MEMBERS OF CERTAIN COMPANIES.

(1) Where the Income-tax officer is satisfied that in respect to any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting are less than sixty per cent. of the assessable income of the company of that previous year, as reduced by the amount of income-tax and super-tax payable by the company in respect thereof he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes and reduced by the amount of income-tax and super-tax payable by the company in respect thereof shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income

Provided that when the reserve representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid

up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply as if instead of the words 'sixty per cent.' the words 'one hundred per cent.' were substituted:

Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent. of the assessable income of the company as reduced by the amount of income-tax and super-tax payable by the company in respect thereof, unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made is not less than sixty per cent. of the assessable income of the company of the previous year concerned as reduced by the amount of income-tax and super-tax payable by the company in respect thereof:

Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

Explanation. — For the purpose of this sub-section,—

(1) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five

per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply, and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in the taxable territories or are in fact freely transferable by the holders to other members of the public.

(2) The Inspecting Assistant Commissioner shall not give his approval to any order proposed to be passed by the income-tax Officer under this section until he has given the company concerned an opportunity of being heard.

(3) (i) [omitted].

(ii) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (1) the tax payable in respect thereof shall be recoverable from the company, if it cannot be recovered from such member.

(iii) Where tax is recoverable from a company under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI.

(4) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year the proportionate share therein of

any member of the company shall be excluded in computing his total income of that year.

(5) When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company.

The object underlying the introduction of this section is to prevent the avoidance of income-tax and super-tax, and more particularly super-tax, by shareholders of companies by non-declaration of dividends.

If within six months of its first placing the accounts before the company in general meeting, the company does not distribute as dividend at least 60 per cent. of its assessable profits after deduction therefrom the amount of income tax and super-tax payable in respect thereof, the Income-tax Officer may make an order that the undistributed portion of the profits will also be treated as distributed as dividend among the shareholders and the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purposes of his assessment. This section shall not apply if 60 per cent of the profits arrived at as above have been declared as dividend and distributed.

The Income-tax officer may not apply this section if he is satisfied that on account of losses incurred by the company in earlier years or on account of smallness of profits a dividend or higher rate of dividend than what is declared is not possible. In case the profits distributed are less than 60 per cent. but more than 55 per cent, before applying the provisions of this section the Income-tax Officer may give up to 3 months time to the company to make up the required 60 per cent.

If the company has as reserve large accumulated profits which have not been subjected to an order under this section in

the past, this section shall apply if the company has not distributed whole of the assessable income of the previous year, that is to say in place of 60 per cent. in the above section full 10 per cent. shall be substituted.

This section does not apply to any company in which public are substantially interested or to its subsidiary company if whole of the share capital of such subsidiary company is held by the parent company.

What is deemed to be 'a company in which public are substantially interested' is given in the explanation under subsection (1) of this section. Other provisions of this section may be read from sub-sections (2) to (5) of this section given above.

SECTION 23 B.

POWER TO MAKE PROVISIONAL ASSESSMENT IN ADVANCE OF REGULAR ASSESSMENT.

(1) The Income-tax Officer may, at any time after the receipt of a return made under Section 22, proceed to make in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it, after giving due effect to (i) the allowance referred to in paragraph (b) of the proviso to clause (vi) of sub-section (2) of Section 10 and (ii) any loss carried forward under sub-section (2) of Section 24.

(2) A partner of a firm may be provisionally assessed under sub-section (1) in respect of his share in the firm's income, profits and gains, if its return has been received, although the return of the partner himself may not have been received.

(3) A firm may be provisionally assessed under sub-section (1) as if it were an unregistered firm, unless the firm fulfils such conditions as the Central Government may, by notification in the official Gazette, specify in that behalf.

(4) There shall be no right of appeal against a provisional assessment made under sub-section (1).

(5) For the avoidance of doubt, it is hereby declared that the provisions of Section 45 (except the first proviso) and Section 46 apply in relation to any tax payable in pursuance of a provisional assessment made under sub-section (1) as if it were a regular assessment made under Section 23.

(6) Income tax paid or deemed to have been paid under Section 18 or 18 A in respect of any income provisionally assessed under sub-section (1), shall be deemed to have been paid towards the provisional assessment.

(7) After a regular assessment has been made under Section 23, any amount paid or deemed to have been paid towards a provisional assessment made under sub-section (1), shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment, exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee,

(8) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on the merits, of any issue which may arise in the course of the regular assessment under Section 23.

In the cases of big concerns it usually takes a long time for the income-tax Officer to complete the assessment and many times there are a large number of cases of big concerns pending before him. The result is that regular assessments of many concerns is not made till late in the financial year and sometimes even up to next year. In this way huge amount of money which could come to the Government Treasury as income-tax remains unpaid for long periods. In order that Government may receive tax money from the assesseees without waiting for the regular assessment to be made Section 23B provides for a provisional assessment, according to which any time after the return of income from the assessee the Income tax Officer may make in a summary manner a provisional assessment of the tax payable by the assessee on the basis of his return after giving effect of any unabsorbed depreciation or business losses carried forward from the previous year or years.

A partner of a firm may be provisionally assessed in respect of his share of profit of the firms if the return of the firm is received although the return of the partner himself is not received.

Under sub-section (3), a firm will be provisionally assessed as if it were an unregistered firm unless it fulfills the following conditions as notified by the Central Government:—

- (i) a firm which has been treated as a registered firm for the purpose of its last completed regular assessment, may be treated as registered for its provisional assessment if it has already made an application for registration in respect of the year for which the provisional assessment is to be made, and
- (ii) a firm on which no regular assessment has been made for any year prior to that for which the provisional assessment is to be made, will be treated as registered for its provisional assessment if on or before the date on which it has made its return of income, an application for registration together with a copy of the Partnership Deed has been made by the firm to the Income-tax Officer.

There is no right of appeal against the provisional assessment, and the amount of tax assessed is recovered in the same way as tax assessed as a result of regular assessment under section 23. Any income tax paid at source under section 18, or in advance under section 18 A will be accounted for in determining the amount payable as a result of provisional assessment.

SECTION 24.

SET-OFF OF LOSS IN COMPUTING AGGREGATE INCOME.

(1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year :

Provided that, where loss sustained is a loss of profits or gains which would but for the loss have accrued or arisen within India but outside the taxable territories and would, under the provision of clause (c) of sub-section (2) of section 14, have been exempted from tax, such loss shall not be set off except against profits or gains accruing or arising within India, but outside the taxable territories and exempt from tax under the said provisions:

Provided further that where the assessee is an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section:

(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than

the previous year for the assessment for the year ending on the 31st day of March, 1940, under the had 'Profits and gains of business, profession or vocation', and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year and so on; but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, respectively, shall be carried forward only for one, two, three, four and five years, respectively:

Provided that—

(a) where the loss sustained is a loss of profits and gains of a business, profession or vocation to which the first proviso to sub-section (1) is applicable, and the profits and gains of that business, profession or vocation are, under the provisions of clause (c) of sub-section (2) of section 14, exempt from tax, such loss shall not be set off except against profits and gains accruing or arising in India but outside the taxable territories from the same business, profession or vocation and exempt from tax under the said provisions ;

(b) where depreciation allowance is, under clause (b) of the proviso to clause (vi) of sub-section (2) of section 10, also to be carried forward, effect shall first be given to the provisions of this sub-section:

(c) nothing herein contained shall entitle any assessee, being a registered firm, to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-section (1), or entitle any assessee, being a partner in an unregistered firm which has not been assessed under, provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm :

(d) where an unregistered firm is assessed as a registered firm under clause (b) of sub-section (5) of section 23, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm;

(e) where a change has occurred in the constitution of a firm, nothing in this section shall be deemed to entitle the firm to have set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with the provisions of clause (b) of sub-section (1) of section 16 as exceeds his share of profits, if any, of the previous year in the firm, or to entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under the said clause (b), and where any person carrying on the business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.

(2A) Notwithstanding anything contained in sub-section (1) where the loss sustained is a loss falling under the head "capital gains," such loss shall not be set off

except against any profits and gains falling under that head.

(2B) Where an assessee sustains a loss such as is referred to in sub-section (2A) and the loss cannot be wholly set off in accordance with the provisions of that sub-section, the portion not so set off shall be carried forward to the following year and set off against capital gains for that year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following year and so on, so however that no such loss shall be so carried forward for more than six years:

Provided that where the loss sustained in any previous year does not exceed fifteen thousand rupees, it shall not be carried forward.

(3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section.

According to the provisions of section 6 of the Indian Income-tax Act taxable income of an assessee is classed under the following five heads:—

- (i) Salaries,
- (ii) Interest on securities;
- (iii) Income from property;
- (iv) Profits and gains of business, profession and vocation;
and
- (v) Income from other sources.

According to the provisions of section 24 (1), loss under any one or more heads of income, if any, can be set off against profits under other head or heads, before arriving at the taxable

income of the assessee. In other words taxable income of an assessee in any year is the aggregate of the amounts under all the heads, whether those amounts are plus figures or minus figures. Where the assessee is an unregistered firm that firm and that firm alone can set off the loss incurred by the firm. The old ruling that a partner in an unregistered firm could set off his share of the firm's loss against his own income has now become obsolete by the insertion of second proviso to subsection (1) of this section as a result of which no member of an unregistered firm (unless that unregistered firm has, under section 23 (5) (b), been dealt with as a registered firm) can be allowed to set off his share of the loss in the unregistered firm against his other income. Where the assessee is a registered firm, the loss of the registered firm is set off against the registered firm's own income in the first instance and then the balance of the loss is allocated between the partners and set off against their other income.

According to the provisions of the Indian Income-tax (Amendment) Act, 1939, when loss of profits or gains of a business, profession or vocation cannot be wholly set off against the assessee's other income for the same year, it can be carried forward and set off against his profits and gains, if any, of the same business, profession or vocation for the next year. It may be emphasised that loss of business, profession or vocation only can be carried forward and can be set off against the profits and gains of the same business, profession or vocation of the assessee. Losses under any other head or heads cannot be carried forward to be set off in future; or loss of business, profession or vocation cannot be carried forward and set off against profits and gains of any other business, profession or vocation of the assessee or against his income under any other head. If the business which resulted into a loss is discontinued in the meantime the right to carry forward the loss lapses. This concession of carrying forward and setting off of business losses did not exist prior to the amendment of the Act in 1939. Before the passing of the above

Amendment Act if an assessee sustained business loss in one year which could not be set off against his income under other heads no note was taken of this loss in his future assessments. If he got profit from the same business next year he was required to pay income-tax on the whole of it without any regard of the loss of the previous year. By the Amendment Act if owing to inadequacy of profits the loss cannot be wholly exhausted in the next year, it can be carried forward and set off against the profits of the following year, and so on, up to a period of six years.

The following illustration will make clear the position in this regard as before the 1939 Amendment of the Act and after the Amendment.

Profits or losses from the same business for the assessments of: —		Rs.			Rs.
1934-35	Loss	20,000	1944-45	Loss	20,000
1935-36	Profit	35,000	1945-46	Profit	35,000
1936-37	Loss	40,000	1946-47	Loss	40,000
1937-38	Loss	30,000	1947-48	Loss	30,000
1938-39	Profit	80,000	1948-49	Profit	80,000
Assessment of—			Assessment of—		
1934-35		no tax	1944-45		no tax
1935-36	tax on	35,000	1945-46	tax on—	
			Rs. 35,000		
			—Rs. 20,000		15,000
1936-37		no tax	1946-47		no tax
1937-38		no tax	1947-48		no tax
1938-39	tax on	80,000	1948-49	tax on—	
			Rs. 80,000		
			—Rs. 40,000		
			—Rs. 30,000		10,000

If on account of insufficiency of profits even whole of the depreciation allowance for the year cannot be absorbed, the unabsorbed depreciation is also carried forward to be set off

against future profits. There is no time limit for setting off of unabsorbed depreciation. When both unset-off business loss and unabsorbed depreciation exist simultaneously, business loss is set off in priority because there is a time limit for its setting off and unabsorbed depreciation is set off next because it can be carried forward for an indefinite period of time.

Where a change has occurred in the constitution of a firm or where there has been a succession to a business, profession or vocation, the reconstituted firm as such, or the person succeeding to the business, is not entitled to set off. Only the persons actually incurring the loss are entitled to set it off against their future income, profits or gains. Thus if a registered partnership consisting of A, B, and C is reconstituted. A retiring and D coming in A by leaving the firm forfeits the right to carry forward his share of the firm's loss does not inherit A's share of loss and cannot claim to set it off against his share of profit. Only B and C can carry forward their shares of the firm's loss. Similarly, if E is succeeded in a business (in which there is a loss) by F, E forfeits the right to carry forward of loss by transferring the business to F, and F cannot claim to set off against his profits the loss incurred by E.

With the above provision for carry forward of business losses to be set off against future profits the determination of loss sustained by an assessee has become important. The Income-tax Officer should pass an order determining the loss in the same way in which he passes an order determining the taxable income of and tax payable by, the assessee. This order is appealable under section 30 in the same way as an order determining the assessment upon which tax is payable.

Income accruing or arising outside the taxable territories in India is exempt unless it is received in the taxable territory. It is, therefore, provided that losses sustained outside the taxable territories can be set off only against the profits which are exempt, and if they cannot be wholly set off under section

24 (1), they have to be carried forward under sub-section (2) and set off against the profits and gains accruing or arising outside the taxable territories from the same business, profession or vocation and exempt from tax.

SECTION 24A

ASSESSMENT IN CASE OF DEPARTURE FROM TAXABLE TERRITORIES

(1) When it appears to the Income-tax Officer that any person may leave the taxable territories during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income of the period from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of his departure from the taxable territories, or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from the taxable territories. The Assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous year to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made.

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains which have escaped assessment or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but in respect of which he is debarred from issuing a notice under section 34.

(2) For the purpose of making an assessment under sub-section (1) the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the relevant period referred to in the first sentence of sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 22.

Emergency Assessment:—This section was added by the Indian income tax (Second Amendment) Act, 1933, in order that the Income-tax Officer may be able to make Emergency Assessments in respect of persons who are likely to leave the taxable territories without intending to return. Before the above amendment temporary residents could escape tax by leaving the country before the close of the financial year, because before the close of the financial year a notice under section 22 (2) could not be issued by the Income-tax Officer to any assessee. This section provides for the assessment, at short notice, of persons

who are intending to leave the taxable territories before the close of the current financial year or shortly after the close. According to the provisions of this section at any time during the current year the income tax Officer may serve notice under Section 22 (2) calling for the return of income within such period (not being less than 7 days) as he may fix. If the assessee does not comply with this notice the Income-tax Officer can apply section 23 (4) and make the 'Best Judgment assessment'

The assessment is made for each completed previous year, included in the period of assessment, at the rate at which such total income would have been charged had it been fully assessed. As regards the period from the expiry of the last such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income during such period and assess it at the rate in force for the year during which the assessment is made.

This section cannot be used to assess an income which has escaped assessment or has been assessed at low a rate or has been under assessed in respect of which the Income-tax officer cannot issue a notice under section 34.

SECTION 24B

TAX OF DECEASED PERSON PAYABLE BY REPRESENTATIVE

(1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 4, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-sections (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee :

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may by the issue of appropriate notice which would have had to be served

upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of section 22 and 23 have required from the deceased person.

This section provides that an executor, administrator, or other legal representative of a deceased person shall be treated as an assessee for the purposes of an assessment on the income of a deceased person. For the purposes of making such assessments, the Income-tax Officer may require the executor, administrator, or legal representative of the deceased to produce documents or other evidence under Sections 22 and 23. All the provisions of the Act relating to the assessment and collection of tax apply to these cases. All the consequences of an assessment under section 23, will, therefore, follow. A notice of demand will be issued to legal representative under section 29. The legal representative can file an appeal under section 30 or can seek other relief which under the circumstances, and to the extent, the assessee himself could seek had he been alive.

The liability, of an executor, administrator or other legal representative in respect of tax due by the deceased is, however, confined to the payment of tax to the extent to which the estate of the deceased is capable of meeting the charge.

SECTION 25

ASSESSMENT IN CASE OF DISCONTINUED BUSINESS

(1) Where any business, profession or vocation to which sub-section (3) is not applicable, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment if any, made on the basis of the income, profits or gains of the previous year.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918 (VII of 1918), is discontinued; then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered applicable no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be

deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

Provided that sub-sections (3) and (4) shall not apply—

(a) to super-tax except where the income, profits and gains of the business, profession or vocation were

assessed to super-tax for the first time either for the year beginning on the 1st day of April, 1920; or for the year beginning on the 1st day of April, 1921;

(b) to a business, profession or vocation on which income-tax was at any time charged in the hands of a company under the Indian Income-tax Act, 1886 or on which income-tax would have been charged in the hands of a company for the assessment year ending on the 31st day of March, 1918, if the company having been in existence in that year, had also been in existence in the year ending on the 31 day of March, 1917.

(5) No claim to the relief afforded under sub-section (3) or sub-section (4) shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be.

(6) Where an assessment is to be made under sub-section (1), sub-section (3), or sub-section (4), the Income tax Officer may serve on the person whose income, profits and gains are to be assessed, or in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

Sub-section (1) of this section provides an exemption to the general rule that assessments are made on the profits of the previous year. In order to guard against a possible loss of tax, due to delay in making assessment on the profits of a business, profession or vocation that closes down during the course of a financial or commercial year, it is provided that in such cases

in addition to the assessment on the income of the preceding year a further assessment may be made in that year in which the business, profession or vocation is closed down, on the income of that year. Sub-section (2) imposes a statutory obligation on the persons discontinuing a business, profession or vocation to give notice of such discontinuance within fifteen days of discontinuance.

The power to make this additional assessment under sec. 25 (1) is a discretionary power which can be exercised whether the business is a temporary one commencing and closing down in the same year—, or it has been in existence for some time and has been previously taxed under the present Act. Ordinarily it will be used in cases where there may be reason to anticipate that the tax may not be collected unless the assessment is made in the year in which the business is closed down. Where no difficulty is anticipated in making the assessment and collecting tax in the usual manner, the special powers conferred by this sub-section will not be used.

According to the provisions of Income tax Act of 1918, an assessee was assessed, and income tax was charged from him, in respect of current financial year on the basis of his expected income during that year. After the close of the accounting year if the actual income of the assessee for the year was found to be different (more or less) from the expected income on the basis of which a provisional assessment was made, necessary adjustment in the amount of tax already charged from him was made while assessing him for the next year. According to this method profits of each year were assessed the same year in which they accrued, arose or were received and income tax was charged. By the Act of 1922, the system was changed and tax began to be charged on the basis of the previous year's income.

Under sub-section (3) two concessions are available to an assessee who has ever been charged to tax in respect of his business, profession or vocation under the provisions of Income tax Act of 1918—

- (i) he is not liable to tax in respect of profits or gains for the period between the end of the last 'previous year' and the date of the discontinuance of business unless sub section (4) applies, and
- (ii) he is further entitled to claim that the profits of that period be substituted for profits of the 'previous year' and tax in respect of Previous Years' income be charged on the basis of the profits of this period, and if the previous year's income has already been assessed and a tax exceeding the amount of tax due on the basis of these profits has already been paid he will be entitled to a refund.

The amendment by the Act of 1933, of sub-section (3), and the addition of sub section (4), are made necessary by the amendment of Section 26 which provides for the taxation of the predecessor in respect of his share of profits where there has been a succession. In such a case as the predecessor will have to pay tax in respect of the profits earned by him up to the date on which he transferred the business, it is he and not the successor who should get the relief as provided by sub-section (3). The amendment came into effect from the first day of April, 1939. The date on which the business was started by the predecessor is immaterial to the successor, because he (the successor) will pay tax only in respect of the actual profits earned by him from the date on which he took over the business.

In the case of business, profession or vocation discontinued after the 26th November, 1941, the relief under sub-sections (3) and (4), in respect of super-tax, will be available to such businesses, professions or vocations only as were assessed for the first time in 1920-21 or 1921-22.

A company which was ever assessed under the Income tax Act of 1886, or the one which commenced business in the financial year 1917-18 and was assessed for the first time in 1918-19 will be taxed on its income during the year of discontinuance

also. In the case of such companies the benefit of sub-sections (3) and (4) is therefore withdrawn.

Sub-section (5) imposes a statutory limit of a period of one year within which a claim to be assessed under sub-section (3) or sub-section (4) can be entertained.

The same procedure as is followed in an ordinary assessment is also followed in respect of assessments under sub-sections (1), (3) and (4). Instead of a general notice under section 22 (1), a special notice under Section 22 (2) should be given to the individual assessee concerned or to any partner of the firm where the assessee is a firm, or to the principal officer of the company where the assessee is a company.

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SECTION 25A

ASSESSMENT AFTER PARTITION OF HINDU UNDIVIDED FAMILY

(1) Where, at the time of making an assessment under Section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect :

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, or where any person has succeeded to a business, profession or

vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such; as if no partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it; and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23 :

Provided that all the members and groups of members whose joint family property has been partitioned shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.

If at the time of assessment a member of a Hindu family claims that the family has been divided and that he should be assessed individually in respect of his share of income of the Hindu family, the Income-tax Officer should make an inquiry about it and if satisfied that partition has actually taken place should record an order to that effect.

When the claim of partition made by a Hindu Undivided Family is accepted by the Income tax Officer, the family will still be liable to assessment on its total income up to the date of

partition and each member or group of members will be liable to pay his or its proportionate share of the tax so assessed according to the portion of family property allotted to him or to it.

This will be in addition to any tax payable by him separately. The same procedure will apply even if the business or or profession of the family has been succeeded by another person or by the members of the family who form themselves into a firm. If tax due from any member or group of members cannot be recovered all the members and the group of members shall be liable, jointly and severally, for the tax assessed on the total income received by or on behalf of the joint family as such.

Partition will be accepted by the Income-tax officer as satisfactory for the purposes of this section if the members of the family have separated in status from each other and if it is proved that the members have partitioned their business and property under documents properly executed according to law. The members, of course, may continue to have a common mess and residence.

Some times the partition may be only partial in any of the following two ways—

(a) when only one or some members of the family go out and the rest live jointly.

(b) when only a portion of the family property is partitioned and the rest is kept joint.

In the first case the outgoing member or members will be assessed individually in respect of income of property assigned to them and the remaining members of the joint family will be assessed as a Hindu undivided family. When only a part of the family property is partitioned the income from the property partitioned will be assessed in the hands of the members individually and the rest of the property (undivided property) will be treated as joint family property and taxed in the hands of the 'karta' of the family.

SECTION 26

CHANGE IN CONSTITUTION OF A FIRM

(1) Where, at the time of making an assessment under Section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted at the time of making the assessment :

Provided that the income, profits and gains of the previous year shall, for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same :

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment.

(2) Where a person carrying on any business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.

Sub-section (1), provides that where a change has occurred in the constitution of a firm or where a firm has been newly

constituted, the assessment is to be made upon the firm as constituted at the time of assessment, but the profits are to be apportioned among the persons who were partners in the previous year and not among the partners entitled to the profits at the time of assessment. This sub-section thus provides for taxation of each partner in respect of the profits to which he was actually entitled in the previous year.

Thus if a registered firm of equal partners A, B and C which carried on business throughout the year ended 31st January 1939, (the "previous year" for 1939-40 assessment) earned a total profit of Rs. 30,000, and if on 1st May 1939, A retired and D came in as a partner, taking over A's share, the assessment for 1939-40 would be made on the firm BCD because that is the firm as constituted at the time of assessment and the profits of the "previous year"; after being determined will be divided for assessment purposes between A, B and C (and not between B, C and D). A, B and C would each be assessed on Rs. 10,000, whilst D will pay no tax in respect of the profits for the year ended 31st January, 1939, assessed in 1939-40.

In the assessment for 1940-41, if there were no further changes in partnership up to 31st January, 1940, the profits would be divisible as follows:—

- A — $\frac{1}{3}$ proportion of the proportionate profits from 1st February to 30th April, 1939 — $\frac{1}{3}$ of $\frac{3}{12} = \frac{1}{12}$.
- B — $\frac{1}{3}$ of the profits of the whole year ending 31st January, 1940 — $\frac{1}{3}$.
- C — $\frac{1}{3}$ of the profits of the whole year ending 31st January, 1940 — $\frac{1}{3}$.
- D — $\frac{1}{3}$ proportion of the profits from 1st May 1939 to 31st January, 1940 — $\frac{1}{3}$ of $\frac{9}{12} = \frac{1}{4}$.

Sub-section (2) applies to cases in which a business, profession or vocation, has changed hands. It provides that each person is to be assessed in respect of the share of profits to which he was entitled in the previous year. Thus if B succeeded A halfway through the previous year, and the total profits made were Rs. 10,000, then assuming that the profits were made evenly

throughout the previous year, each would be assessed on Rs. 5,000.

Where the predecessor cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and of the year preceding that year, shall be made on the successor in the like manner and to the same extent as it would have been made on the predecessor. It is also provided that the tax can be recovered from the successor if it cannot be recovered from the predecessor.

The question whether a succession has taken place is a question of fact which must be decided with reference to the facts of the particular case, but there cannot be succession to a part only of a single business. It frequently happens that one person is conducting two or more separate and distinct business to each of which there can be a succession.

SECTION 26A

PROCEDURE IN REGISTRATION OF FIRMS

(1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

Partnership firms may be registered for the purpose of income-tax. By getting the firm registered the partners get the privilege of paying tax at lower rate. At a time a firm is regis-

tered for a period of one year only. The certificate of registration granted has effect only for the assessment to be made for the year mentioned therein. For the purposes of the assessment of a subsequent year the registration has to be renewed. An application for registration may be made—

(a) before the income of firm is assessed for any year under Section 23 of the Act, or

(b) if no part of the income of the firm has been assessed for any year under Section 23 of the Act, before the income of the firm is assessed under Section 34 of the Act, or

(c) with the permission of the Appellate Assistant Commissioner hearing an appeal under Section 30 of the Act, before the assessment is confirmed, reduced, enhanced or annulled, or

(d) if the Appellate Assistant Commissioner sets aside the assessment and directs the Income-tax Officer to make a fresh assessment, before such fresh assessment is made, or

(e) before or after the dissolution of the firm in respect of the assessment or assessments to be made on its income up to the date of dissolution.

The application for registration must be made in the prescribed form, must be signed personally by all the partners and must be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof.

Before registering the firm the Income-tax Officer should see that the firm is genuine and is constituted under an instrument of partnership specifying the individual shares of the partners.

If on receipt of the application the Income-tax Officer is satisfied that there is or was a firm in existence constituted as shown in the instrument of partnership and that the application has been properly made, he shall grant a certificate of registration. If on the other hand the Income-tax Officer is not satisfied, he shall pass an order refusing to grant registration.

SECTION 27

CANCELLATION OF ASSESSMENT WHEN CAUSE IS SHOWN

Where an assessee within one month from the service of a notice of demand issued as here in after provided, satisfies the income-tax Officer that he was prevented by sufficient cause from making the return required by Section 22, or that he did not receive the notice issued under sub-section (4) of Section 22, or sub-section (2) of Section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of Section 23.

When an assessee—

- (i) fails to make a return of his income as required by Section 22 (2) and does not make a return or revised return under Section 22 (3); or
- (ii) fails to comply with all the terms of notice issued to him under Section 22 (4) requiring him to produce accounts and documents etc.; or
- (iii) fails to comply with the terms of notice issued under Section 23 (2) requiring his personal presence or production of evidence which can be relied in support of the return, the Income-tax Officer may make a 'best judgement assessment' under Section 23 (4).

If the assessee is dissatisfied with the 'best judgement assessment' he has two alternatives open to him—

- (i) Within one month of the service of notice of demand he can apply to the Income tax Officer, under this

section, to cancel the assessment order and make a fresh assessment in accordance with the provisions of Section 23.

- (ii) He can file an appeal under Section 30, with the Appellate Assistant Commissioner of Income Tax against the order of the Income tax Officer.

The order of the Income-tax Officer making a assessment, correct or amend tax, under Section 23, or an order cancelling the application of the assessee under this section, are appealable under Section 30 (i).

Following conditions are necessary for cancellation of the assessment order under Section 27: —

- (i) The assessee should be able to prove that he was prevented by sufficient cause from making the return or
- (ii) The assessee should be able to prove that he did not receive notice under Section 22 (4) or 23 (2) or did not have reasonable opportunity to comply with, or was prevented by sufficient cause from complying with, the terms of the notices.

If the assessee satisfies the Income-tax Officer that he was not in default, the Income tax Officer shall cancel the assessment order under Section 23 (4) and shall proceed afresh.

SECTION 28.

PENALTY FOR CONCEALMENT OF INCOME IMPROPER DISTRIBUTION OF PROFITS

(1) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of Section 22 or Section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or

(b) has without reasonable cause failed to comply with a notice under sub-section (4) of Section 22 or sub-section (2) of Section 23, or

(c) has concealed the particulars of his income or dishonestly furnished inaccurate particulars of such income,

he or it may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income.

Provided that—

(a) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of Section 22;

(b) where a person has failed to comply with a notice under sub-section (2) of Section 22 or section 34 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees ;

(c) no penalty shall be imposed under this section upon any person assessable under Section 42 as the agent of a person not resident in the taxable territories for failure to furnish the return required under Section 22 unless a notice under sub-section (2) of that section or under Section 34 has been served on him.

(d) when the person liable to penalty is a registered firm, or an unregistered firm treated under section 23 (5) (b) as a registered firm, so that the amount of the income tax and super-tax payable by the firm itself has not been determined, that amount shall be taken to be an amount equal to the tax which would have been payable by an unregistered firm on an income equal to the firm's total income, and, in the cases referred to in clauses (b) and (c), the amount of the income-tax and super-tax which would have been avoided if the income as returned had been accepted as the correct income, shall be taken to be the difference between the amount of the tax which would have been payable by an unregistered firm on an income equal to the firm's total income and the amount of the tax payable by an unregistered firm on an income equal to the income of the firm as actually returned by

the firm.

(2) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, he or it may direct that such partner shall in addition to the income-tax and super-tax, if any, payable by him pay by way of penalty a sum not exceeding one and a half times the amount of income-tax and super-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An Appellate Assistant Commissioner or the Appellate Tribunal on making an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer.

(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

Failure on the part of an assessee to make a return of his income as required by Section 22 (2), or to comply with the terms of notices issued under Section 22 (4) or 23 (2) attracts assessment to the best of the Income tax Officer's judgment. In addition further penalty may be imposed on the assessee for any one or more of the above failures. Penalty may also be imposed upon an assessee for non-compliance with notice under Section 22 (1) or Section 34, or for concealing the particulars of his income or deliberately furnishing inaccurate particulars of such income.

If a specific notice has been served upon an assessee under Section 22 (2) or under Section 34, and ultimately it is found that the assessee had no income liable to tax, penalty can still be imposed for the failure to comply with the notice but the amount of penalty can be at the most Rs. 25.

An assessee whose total income is less than Rs. 3,500, or one who is assessable under Section 42, as the agent of a non-resident, will not be liable to penalty only on account of non-compliance with general notice under Section 22 (1). To attract penalty individual notice under Section 22 (2) or notice under Section 34, should have been served on him.

If with the object of avoiding tax, the profits of a registered firm have been distributed among the partners in a proportion other than the one shown in the instrument of partnership, and if on the basis of such wrong distribution any partner returns his income below the real amount the partner may be liable to a penalty (in addition to income tax and super-tax payable by him, if any) up to one-and-a-half times the amount of tax which would have been avoided if the wrong return filed by him was accepted as correct.

The measure of penalty is stated in sub-section (1) above. Penalty cannot be imposed on an assessee without giving him full opportunity to explain his case and while the Appellate Assistant Commissioner of Income-tax or Appellate Tribunal can impose the penalty at their own initiative, the Income-tax Officer must obtain previous approval of the Inspecting Assist-

ant Commissioner.

An assessee cannot be prosecuted in respect of facts if on the same facts penalty has been imposed on him under this section.

Other principal sections of this Act which deal with offences and penalties are:—

Section 51.—dealing with—

(a) failure to deduct, and pay, tax at source as required by Section 18, or Section 46 (5);

(b) failure to furnish certificate under section 18 (9) or Section 2);

(c) failure to furnish in due time any of the returns mentioned in Section 19A, Section 21, Section 22 (2) or Section 28;

(d) failure to produce on or before the date mentioned in notice under Section 22 (4) accounts or documents asked for;

(e) failure by a company to grant inspection, or allow copies to be taken, in accordance with the provisions of section 39.

For any of the above offences the assessee may be prosecuted before a Magistrate and on conviction be punished with fine which may extend to rupees ten for every day of default.

Section 52—If a person makes a false statement or a statement which he does not believe to be true, in a verification mentioned in Section 19A or Section 20A or Section 21 or Section 22 or Section 26A (2) or Section 31 (3) or Section 33 (3) he shall be punishable on conviction before a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalties referred to in other sections of this Act are—

Section 25 (2) Any person discontinuing any business, profession or vocation on which tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918, shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof and where any person fails to give the notice required by this sub-section, the Income-tax Officer

may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profit or gains of the business, profession or vocation up to the date of its discontinuance.

Section 44 E and 44F. In the case of 'Bond-washing transactions' in buying and selling of securities the Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of discovering whether tax has been borne in respect of the interest on all these securities and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

Section 46 (1). When an assessee is in default in making a payment of income tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty,

According to provisions of Section 18A, (Advanced payment of tax) under certain circumstances an assessee may be liable to pay penal interest—sub-sections (6) & (7) and or penalties—sub-section (9).

No prosecution can be launched against an assessee under Section 51 or Section 52 except at the instance of the Inspecting Assistant Commissioner. The Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any such offence. (Section 53)

Save as otherwise provided in Section 54, all information on record in respect of an assessee's affairs, or disclosed to an officer or other employee of the Income-tax Department, must be kept strictly confidential. If a public servant discloses any

particulars contained in any statement, return, accounts, documents, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

SECTION 29

NOTICE OF DEMAND

When any tax, penalty or interest is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax, penalty or interest a notice of demand in the prescribed form specifying the sum so payable.

Under this Section a notice of demand is served on an assessee requiring him to pay the amount of any tax, penalty or interest due in consequence of any order passed on him.

Section 45 of this Act lays down how and when the amount demanded shall be payable by the assessee and Section 46 provides various methods which are open to the Income-tax officer to recover the amount of tax, interest or penalty from the assessee in default.

SECTION 30.

APPEAL AGAINST ASSESSMENT UNDER THIS ACT.

(1) Any assessee objecting to the amount of income assessed under Section 23 or Section 27, or the amount of loss computed under Section 24 or the amount of tax determined under Section 23 or Section 27, or denying his liability to be assessed under this Act, or objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of Section 23 or to a refusal to register a firm under sub-section (4) of Section 23 or Section 26 A or to make a fresh assessment under Section 27 or objecting to any order under sub-section (2) of Section 25 or Section 25A or sub-section (2) of Section 26 or Section 28, made by an Income-tax officer or objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of Section 44E or sub-section (5) of Section 44F or sub-section (1) of Section 46, or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under Section 48, 49 or 49F or to the amount of the refund allowed by the Income-tax Officer under any of those Sections, and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub-section (1) of section 23A, may appeal to the Appellate Assistant Commissioner against the assessment or against such refusal or order :

Provided that no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid :

Provided further that where the partners of a firm are individually assessable on their shares in the total

income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income:

Provided further that a shareholder in a company in respect of which an order under Section 23 has been passed by an Income-tax Officer may not in respect of matters determined by such order appeal against the assessment of his own total income.

(1A) Any person having, in accordance with the provisions of sub-section (3A), (3B) or (3C) of Section 18, read with sub-section (6) of that Section, deducted and paid tax in respect of any sum chargeable under this Act other than interest who denies his liability to make such deduction may appeal to the Appellate Assistant Commissioner to be declared not liable to make such deduction.

(2) The appeal shall ordinarily be presented within thirty days of the payment of the tax deducted under sub-section (3A), (3B) or (3C) of Section 18 or of receipt of the notice of demand relating to the assessment or penalty objected to or of the order in writing notifying the amount of total income on which the determination under sub-section (5) of Section 23 was based and the apportionment thereof between the several partners or of the loss computed under section 24 or of the intimation of the refusal to pass an order under sub-section (1) of Section 25A, or to register a firm under Section 26A or of the date of the refusal to make a fresh assessment under Section 27, or of the intimation of an order under sub-section

(1) of Section 23A or under Section 48, 49 or 49F, as the case may be ; but the Appellate Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

SECTION 31

HEARING OF APPEAL

(1) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing

(2) The Appellate Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(2A) The Appellate Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(3) In disposing of an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment,—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-

tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of tax payable on the basis of such fresh assessment.

or, in the case of an order cancelling the registration of a firm under sub-section (4) of Section 23 or refusing to register a firm under sub-section (4) of Section 23 or Section 26 A or to make a fresh assessment under section 27,

(c) confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment, as the case may be, or, in the case of an order under sub-section (2) of Section 25 or sub-section (1) of Section 23 A, or sub-section (2) of Section 26 or Sections 48, 49 or 49 F,

(d) confirm, cancel or vary such order,
or in the case of an order under sub-section (1) of Section 25 A,

(e) confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of Section 25 A.

or, in the case of an order under section 28 or sub-section (5) of Section 44 E or sub-section (5) of section 44 F or sub-section (1) of Section 46,

(f) confirm or cancel such order or vary it so as either to enhance or reduce the penalty,
or, in the case of an appeal against a computation of loss under section 24,

(g) confirm or vary such computation,

or, in the case of an appeal under sub-section (1 A) of Section 30,

(h) decide that the person is or is not liable to make the deduction and in the latter case direct the refund of the sum paid under sub-section (6) of Section 18 :

Provided that the Appellate Assistant Commissioner shall not enhance an assessment or a penalty unless the appellant has had a reasonable opportunity of showing cause against such enhancement:

Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative.

(4) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Appellate Assistant Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

(5) The Appellate Assistant Commissioner shall, on the conclusion of the appeal, communicate the orders passed by him to the assessee and to the Commissioner.

SECTION 32.

Omitted

SECTION 33.

APPEALS AGAINST ORDERS OF ASSISTANT COMMISSIONER.

(1) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which such order is communicated to him.

(2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made within sixty days of the date on which the order is communicated to the Commissioner by the Appellate Assistant Commissioner.

(2A) The Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-section (1) and (2) if it is satisfied that there was sufficient cause for not presenting it within that period.

(3) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees.

(4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.

(5) Where as the result of an appeal any change is made in the assessment of a firm or association of persons

or a new assessment of a firm or association of persons is ordered to be made, the Appellate Tribunal may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

(6, Save as provided in Section 66 orders passed by the Appellate Tribunal on appeal shall be final.

SECTION 33A

POWER OF REVISION BY COMMISSIONER

(1) The Commissioner may of his own motion call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit :

Provided that the Commissioner shall not revise any order under this sub-section if—

(a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal may be made has not expired, or

(b) the order is pending on an appeal before the Appellate Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal, or

(c) the order has been made more than one year previously.

(2) The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner, made within one year from the date of the order, call for the record of the proceeding in which such order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit :

Provided that the Commissioner shall not revise any order under this sub-section if—

(a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made, the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal, or

(b) where an appeal against the order has been made to the Appellate Assistant Commissioner, the appeal is pending before the Appellate Assistant Commissioner, or

(c) the order has been made the subject of an appeal to the Appellate Tribunal:

Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(3) Every application by an assessee under sub-section (2) shall be accompanied by a fee of twenty-five rupees.

SECTION 33B

POWER OF COMMISSIONER TO REVISE INCOME-TAX OFFICER'S ORDERS.

(1) The Commissioner may call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) No order shall be made under sub-Section (1),—

(a) to revise an order of re-assessment made under the provisions of Section (34); or

(b) after the expiry of two years from the date of the order sought to be revised.

(3) Any assessee objecting to an order passed by the Commissioner under sub-section (1) may appeal to the Appellate Tribunal within 60 days of the date on which the order is communicated to him.

(4) An appeal to the Appellate Tribunal under sub-section (3) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a treasury receipt in support of having paid the fee of Rs. 100, and such appeal shall be dealt with in the same manner as if it were an appeal under sub-section (1) of Section 33.

If an assessee is dissatisfied with the orders of the

Income-tax Officer, he can file an appeal against such orders with the Appellate Assistant Commissioner of Income tax.

Time limit for an appeal.—An appeal should ordinarily be filed within thirty days of the dates specified in sub-section (2) of section 30 of this Act, but the Appellate Assistant Commissioner may admit an appeal even after the expiry of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period. Where the Appellate Assistant Commissioner does not agree to condone the delay and rejects the appeal on the ground of its being time barred, no appeal against his order lies to the Appellate Tribunal.

Form of Appeal

The appeal must be in prescribed form and must be verified in the prescribed manner. If the appeal is defective in form or verification the Assistant Commissioner may reject it but there is nothing to prevent him if he returns the appeal to rectify formal defects.

Grounds of appeal.—An assessee may file an appeal on any of the following grounds:—

(1) If he objects to the amount of income assessed or the amount of tax determined, under Section 23 or Section 27.

(2) If he objects to the amount of loss computed under Section 24.

(3) If he denies his liability to be assessed under this Act.

(4) If he objects to the cancellation by the Income-tax Officer of the registration of the firm under Section 23 (4) or to Income-tax Officer's refusal to register the firm under Section 23 (4) or Section 26A.

(5) If he objects to refusal of the Income-tax Officer to make fresh assessment under Section 27.

(6) If he objects to any order of the Income-tax Officer:—

(a) under Section 25 (2) directing him to pay penalty for not informing the Income-tax Officer about the discontinuance of business;

- (b) under Section 25A refusing to accept partition of Hindu undivided family;
- (c) under Section 26 (2) holding the successor of a business liable for tax due from his predecessor in case the same cannot be recovered from the predecessor;
- d) under Section 28 imposing penalty for concealment of income or improper distribution of profits.

(7) If he objects to any penalty imposed by the Income-tax Officer under Section 44E (6) or Section 44F (5) for not supplying information in respect of certain transactions in securities, or under Section 46 (1) imposing penalty for default in making payment of income-tax.

(8) If he objects to the refusal of the Income-tax Officer to allow a claim for refund under Section 48, 49 or 49F, or he objects to the amount of refund allowed by the Income-tax Officer under any of the above sections.

(9) If the assessee is a company and it objects to an order made by the Income tax Officer under sub section (1) of Section 23A, assessing individual members of the company.

(10) If the assessee denies his liability to deduct tax from income (chargeable under the Income tax Act other than interest) payable to a non resident.

A share holder in a company is prevented from appealing against an order under Section 23A, because the right of appeal against the order under Section 23A is specifically given to the company and not to the shareholders.

While according to the provisions of Section 30 of the Income-tax Act the assessee, if he is dissatisfied with the judgment and orders of the Income tax Officer, has a right of appeal to the Appellate Assistant Commissioner, the Government or the Commissioner of Income-tax has no right of appeal against the judgment of the Income-tax Officer.

Payment of tax pending appeal—By filing an appeal on the part of the assessee the notice of demand served on him is

not stayed. The assessee must deposit tax as directed by the notice of demand irrespective of the fact that he has filed an appeal. If he does not do so he will be treated as an assessee in default. But the Income-tax Officer, in his discretion, may allow the assessee to defer payment until the appeal is disposed of. In order to secure the above permission application must be made to the Income-tax Officer. Appeal under Section 46 (1) can only be lodged when the tax has been paid.

The appeal having been filed the appellate Assistant Commissioner will fix a date for hearing of the same, and before disposing it of may make such further enquiries as he thinks fit for deciding the appeal. At the hearing of the appeal the Income-tax Officer is entitled to be heard either in person or through a representative. After hearing the case, the Appellate Assistant Commissioner, according to the best of his judgement, may accept the appeal or dismiss it. He may confirm, reduce, enhance or annul the assessment or set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making further enquiries. The enhancement can only be made with reference to the subject matter of appeal and before making enhancement the Appellate Assistant Commissioner must give the appellant a reasonable opportunity of showing cause against the enhancement.

The Appellate Assistant Commissioner is required to communicate the order passed by him not only to the assessee but also to the Commissioner on whom lies the responsibility of filing an appeal to the tribunal under Section 33 (2) if necessary.

Withdrawal of Appeal. After once filing an appeal the assessee is not entitled to withdraw it. It is not open to him to withdraw the appeal and thereby prevent the Appellate Assistant Commissioner from enhancing the assessment if he considers it necessary.

Second appeal to the Appellate Tribunal.—With the establishment of the Appellate Tribunal an opportunity of second

appeal has been afforded to the assessee. An assessee, if dissatisfied with an order passed by an Appellate Assistant Commissioner under section 28 or 31, can appeal to the appellate Tribunal. The time limit for the appeal is 60 days from the date on which such order is communicated to him and should be in the prescribed form accompanied by a fee of Rs. 100. The Commissioner, of Income-tax, if he objects to an order passed by an Appellate Assistant Commissioner under section 31 may direct the Income-tax Officer to appeal to the Appellate Tribunal against such order and such appeal may be made within 60 days of the date on which the order is communicated to the Commissioner by the Appellate Assistant Commissioner. No fee is payable on the appeal by the Government. The Tribunal may admit an appeal even after the expiry of the period of sixty days if it is satisfied that there was sufficient cause for not presenting it within that period.

The Tribunal after giving opportunity to both the parties to be heard passes such orders as it thinks fit and communicates the same both to the assessee and the Commissioner. Save as provided in section 66 orders of a Tribunal on an appeal are final.

Under the provisions of section 33A, the Commissioner of Income-tax has power to revise an order passed by any authority subordinate to him which is prejudicial to the assessee. The Commissioner may exercise this power at his own motion or on application of an assessee. The time limit for such revision is one year from the date of the order and any application of the assessee for revision must be accompanied by a fee of Rs. 25. The Commissioner cannot undertake at his own motion or cannot entertain assessee's application for, revision of the order within the time limit for filing appeal against such order with the Appellate Assistant Commissioner or Appellate Tribunal or when the appeal has already been filed and is pending for decision.

While the Commissioner may revise an order which is pre-

judicial to the assessee under Section 33A, under the provisions of new section 33B he can also review any order passed by an Income-tax Officer, if he finds that the order is prejudicial to the interests of the revenue. He can pass an order enhancing or modifying the assessment or cancelling the assessment or directing a fresh assessment but no order under this section can be passed after the expiry of two years from the date of the order sought to be revised. No order against the assessee can be passed without hearing him and holding an enquiry. A reassessment under Section 34 cannot be revised under section 33B. The assessee may appeal to the Appellate Tribunal against the order of the Commissioner within 60 days of the communication of the order.

Reference to High Court—According to provisions of Section 66, of the Income-tax Act, the assessee or the Commissioner of Income tax, if dissatisfied with the order of the Appellate Tribunal, may within 60 days of such order apply to the Appellate Tribunal requiring it to refer to High Court any question of law arising out of the order. If the assessee applies he should pay a fee of rupees one hundred along with his application for reference. Within 90 days of receipt of such application the Appellate Tribunal should draw up a statement of the case and refer it to the High Court. No reference lies to the High Court on a question of fact.

If the Appellate Tribunal refuses to state the case on the ground that no question of law arises or that the application is time-barred, the applicant (the assessee or the Commissioner as the case may be) may move the High Court and the High Court, if not satisfied with the view taken by the appellate Tribunal, may direct the Appellate Tribunal to state the case and to refer it, or to treat the application as made within time, as the case may be.

After hearing the case the High Court will give its judgment and shall send a copy of the same to the Appellate Tribunal which shall pass orders in conformity with High Court's judgment.

Income-tax shall be payable by the assessee in accordance with the assessment already made irrespective of the fact that a reference has been made to the High Court. If as a result of reference the amount of assessment is reduced refund will be granted to the assessee.

A case referred to the High Court under Section 66 is heard by a bench of not less than two judges. From any judgment of the High Court an appeal can be made to the Supreme Court provided the High Court certifies it to be a fit case to go to Supreme Court.

SECTION 34

INCOME ESCAPING ASSESSMENT

(1) If—

(a) the income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under Section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) Notwithstanding that there has been no omission or failure as mentioned in clause (a) on the Part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or have been under assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed,

he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 22 and may proceed to assess or reassess such income, profits or gains or recompute

the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that—

- (i) the Income-tax Officer shall not issue a notice under this sub-section, unless he has recorded his reasons for doing so and the Commissioner is satisfied on such reasons recorded that it is a fit case for the issue of such notice;
- (ii) the tax shall be chargeable at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be; and
- (iii) where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under Section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year was substituted.

Explanation—Production before the Income-tax Officer of account books or other evidence from which material facts could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section.

(2) Where an assessment is reopened in circumstances falling under clause (b) of sub-section (1), the assessee may, if he has not impugned any part of the original assessment order for that year either under Section 30 or under Section 33-A, claim that the proceedings under sub-section (1) of this section shall be dropped on his showing

that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the items alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made:

Provided that in so doing he shall not be entitled to reopen matters concluded by an order under Section 33-B or Section 35, or by a decision of the High Court or of the Privy Council under Section 66 and Section 66-A.

(3) No order of assessment under Section 23 to clause (c) of sub-section (1) of Section 28 applies or of assessment or re-assessment in cases falling within clause (a) of sub-section (1) of this section shall be made after the expiry of eight years, and no order of assessment or re-assessment in any other case shall be made after the expiry of four years, from the end of the year in which the income, profits or gains were first assessable:

Provided that where a notice under sub-section (1) has been issued within the time therein limited, the assessment or reassessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if such period exceeds the period of eight years or four years, as the case may be:

Provided further that nothing contained in this sub-section shall apply to a re-assessment made under Section 27 or in pursuance of an order under Section 31, Section 33, Section 33-A, Section 33-B, Section 66 or Section 66-A.

This section enables Income-tax Officer to initiate proceedings when he has reason to believe that some income of the assessee has escaped assessment. This section also enables him

to revise the amount of loss, or depreciation allowance, computed by him in excess of the proper amount.

If the escapement is due to the assessee's failure to disclose fully and truly all material facts necessary for the assessment the time limit for reopening assessment proceedings and issuing of notice, in respect thereof, is 8 years, but if there is no omission, or failure, on the part of the assessee and the Income-tax Officer had full information in his possession and still the income escaped assessment the time limit is four years only, from the end of the year in which the income was first assessable, and the assessment or re-assessment must be completed within one year of the date of issue of notice.

Before issuing notice to the assessee under this section the Income-tax Officer must record his reasons for doing so and the Commissioner of Income-tax must be satisfied that it was a fit case for issuing notice.

The tax shall be chargeable at the rate at which it would have been charged had the income not escaped assessment.

SECTION 35

RECTIFICATION OF MISTAKE

(1) The Commissioner or Appellate Assistant Commissioner may, at any time within four years from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under Section 33A and the Income-tax Officer may, at any time within four years from the date of any assessment order or refund order passed by him on his own motion rectify any mistake

apparent from the record of the appeal, revision assessment or refund as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee :

Provided that no such rectification shall be made, having the effect of enhancing an assessment or reducing a refund unless the Commissioner, the Appellate Assistant Commissioner or the Income-tax Officer, as the case may be has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard :

Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939.

(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistake by the Appellate Tribunal.

(3) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(4) Where any such rectification has the effect of enhancing the assessment, or reducing a refund, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

This section empowers the Commissioner or Appellate Assistant Commissioner of Income-tax or the Income-tax Officer to rectify a mistake in any order passed by him in a revision, appeal or assessment, as the case may be, at his own motion or on the application of the assessee. This power of rectification

can be exercised only in case of mistake patent from the facts or documents which were before him when he passed the order. The officers have no general power of review or the assessee cannot introduce new facts. The time limit is four years from the date of the order passed by him. An officer cannot make a rectification which has the effect of enhancing an assessment or reducing a refund without giving the assessee an opportunity of being heard.

The Appellate Tribunal is also empowered to rectify mistake according to above provisions.

Where the rectification results in reducing the assessment refund is allowed to the assessee, or on the other hand if it results in enhancing the assessment the assessee shall be required to pay additional amount of tax.

SECTION 36.

TAX TO BE CALCULATED TO THE NEAREST ANNA

In the determination of the amount of tax or of a refund payable under this Act, fraction of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

SECTION 37

POWER TO TAKE EVIDENCE ON OATH

The Income-tax Officer, Appellate Assistant Commissioner, Commissioner and Appellate Tribunal shall, for the purposes of this chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely,

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commission for the examination of witnesses, and any proceeding before an Income-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal under this chapter shall be deemed to be a "Judicial Proceeding" within the meaning of Section 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

SECTION 38

POWER TO CALL FOR INFORMATION

The Income-tax Officer or Assistant Commissioner may, for the purpose of this Act,—

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm,

or of the manager or adult male members of the family, as the case may be, and of their addresses;

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses;

(3) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head "salaries", amounting to more than Rs.400, together with particulars of all such payments made;

(4) require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the exchange has received any sum, together with particulars of all such payments and receipts.

The object of this section is to obtain information about income of assessee indirectly from the account books of other assessee. In order to find out particulars of payments to other assessee the Income-tax Officers often used to detain assessee's books of accounts for long periods. In order that the assessee may not be put to any hardship this section provides for a right of the Income tax Officer to call for return of particulars of such payments so that there may be no necessity for him to detain the books. Particulars of payments of interest and rent etc. must be furnished in the return under this section irrespective of the fact whether the same can be claimed as deduction in his assessment or not. Even banks are bound to supply to the Income-tax authorities particulars of dealings with their customers.

Income-tax Officers and Inspectors are not empowered to enter the premises of any person to make enquiries and to call for and inspect his account books. But the Taxation on Income (Investigation Commission) Act, empowers the Commission to authorise an official to visit buildings and premises for the purpose of taking extracts and copies of accounts and documents.

SECTION 39.

POWER TO INSPECT THE REGISTER OF MEMBERS OF ANY COMPANY.

The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

The powers conferred by this section and section 38, so far as they relate to Assistant Commissioners, extend to both Appellate and Inspecting Assistant Commissioners.

SECTION 40

GUARDIAN, TRUSTEES AND AGENTS

(1) Where the guardian or trustee of any person being a minor, lunatic or idiot (all of which persons are hereinafter in this sub-section included in the term "beneficiary") is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary, of, any income profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian or trustee, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age or sound mind and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

(2) Where the trustee or agent of any person not resident in the taxable territories and not being a minor, lunatic or idiot (such person being hereafter in this sub-section referred to as a "beneficiary") is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profit or gain chargeable under this Act, the tax, if not levied on the beneficiary direct, may be levied upon and recovered from trustee or agent, as the case may be, in a like manner and to the same amount as it would be leviable upon and recoverable from the beneficiary if in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

SECTION 41

COURTS OF WARDS

(1) In the case of income, profits, or gains chargeable under this Act which the Courts of Wards, the Administrators-General, the Official Trustees or any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, or any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including the trustees under any Wakf deed which is valid under the Mussalman Wakf validating Act, 1913), are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager or trustee or trustees in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable, and all the provisions of this Act shall apply accordingly :

Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate but, where such persons have no other personal income chargeable under this Act and none of them is an artificial juridical person, as if such income, profits or gains or such part thereof were the total income of an association of persons :

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part.

(2) Nothing contained in sub-Section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains.

Section 40, sub-section (1) makes the guardian or trustee of a minor, lunatic or idiot liable to be assessed on any income which such guardian or trustee is entitled to receive on behalf of minor, lunatic or the idiot.

Sub-section (2) of Section 40, makes the trustee or agent of a non-resident liable to be assessed on any income which such trustee or agent is entitled to receive on behalf of the non-resident provided the tax is not levied on the non resident direct.

Section 41 makes (a) the Courts of Wards, (b) the Administrators General, (c) the Official trustees, (d) any receiver or manager appointed by a Court, or (e) any trustee appointed under a duly executed trust deed, or under a will, liable to be assessed on any income which they are entitled to receive on behalf of beneficiaries.

NOTE.—Under either section the liability to assessment is to be in the same manner and to the same extent as it would have been had the assessment been made on the beneficiary.

SECTION 42

Income deemed to accrue or arise within the Taxable Territories

(1) All income, profits or gains accruing or arising whether directly or indirectly, through or from any business connection in the taxable territories, or through or from any property in the taxable territories, or through or from any asset or source of income in the taxable territories, or through or from any money lent at interest and brought in to the taxable territories in cash or in kind, or through or from the sale, exchange or transfer of a capital asset in the taxable territories shall be deemed to be income accruing or arising within the taxable territories and where the person entitled to the income, profits or gains is not resident in the taxable territories shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:

Provided that where the person entitled to the income, profits or gains is not resident in the taxable territories the income-tax so chargeable may be recovered by deduction under any of the provisions of Section 18 and that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come within the taxable territories:

Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such

non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount:

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person.

(2) Where a person not resident or not ordinarily resident in the taxable territories carries on business with a person resident in the taxable territories and it appears to the Income-tax Officer, that owing to the close connection between such persons the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

(3) In the case of a business of which all the operations are not carried out in the taxable territories the profits and gains of the business deemed under this section to accrue or arise in the taxable territories shall be only such profits and gains as are reasonably attributable to that

part of the operations carried out in the taxable territories.

Reference of income deemed to accrue or arise within the taxable territories has already been made in Section 4. The following is an extract from departmental instructions issued by the Central Government with regard to the application of this section.

Departmental instructions—The amendments made in sub-section (1) of this section make it applicable to both residents and non-residents and this sub section now covers all incomes, profits or gains accruing or arising through or from any business connection, property, asset or source of income in taxable territories or through or from any money lent at interest and brought into taxable territories, in cash or in kind. This sub-section extends to all income which arises in a primary sense in the taxable territories even though that income may not be received or brought into taxable territories. The only exception is that provided in respect of pensions payable without India.

It is important to note that where the owner of the income described in sub-section (1) is a non-resident, the assessment can now be made either in his name or in the name of his agent.

The tax chargeable on a non-resident person may be recovered by deduction under any of the provisions of Section 18, and any arrears of tax may be recovered from any assets of the non-resident which are or may at any time come within taxable territories. There is no time limit to such recovery.

Now that the position of an agent of a non-resident is more onerous provision is made to enable such an agent to retain from money payable by him to his non-resident principal, a sum equal to the tax which the agent estimates he will have to pay under this section. If the non resident principal and the resident agent cannot agree on the estimated amount to be so retained, the resident agent can obtain from the Income-tax Officer a certificate stating the amount to be retained pending final settlement of the liability.

Sub-section (2) applies to the business relation between persons not resident or not ordinarily resident in taxable territories and persons who are so resident. It is no longer necessary, for the purpose of this sub-section for the person not resident or not ordinarily resident in the taxable territories to exercise any control over the business of the resident person.

A very important amendment has been made to sub-section (3) and in this connection the distinction between profits and gains which are assessable because they arise in taxable territories and the profits and gains which are assessable because they are deemed to arise in the taxable territories should be carefully noted. Thus if a non resident business consists of buying goods in the taxable territories and selling them in foreign country he will be assessable (either directly or through an agent) only in respect of that part of the profits which is attributable to the buying operations. If, on the other hand the business consists of buying goods abroad and selling them in the taxable territories the full profits or gains arise (i. e. they are not merely deemed to arise) in taxable territories, and are taxable by virtue of the provisions of Section 4 (1) (c) and Section 42 (3) has no application to them.

Indian branches of non-resident firms are liable to assessment under the Act. In order to secure an accurate assessment in such cases, sections 22 (4) and 37 enable an Income-tax Officer to require the production of the Balance Sheet and Profit and Loss Account of the firm as a whole in addition to that of the Indian branch, and also to require the submission of a detailed statement of all the profits credited to the Head Office on account of transactions carried out on its behalf.

It is to be noted that there is no legal basis in Indian Income-tax Law for a distinction between 'trading with taxable territories' and 'trading in taxable territories' the real question being whether there is any income which accrues or arises or is deemed to accrue or arise in the taxable territories. In the case of a consignment business, therefore, if goods are sold outright to a

consignee in the taxable territories by a non-resident consignor who has no other "business connection" in the taxable territories the consignor is not liable to tax as no income arises to him or can be deemed to arise to him in taxable territories on account of the sale of such goods. But if the goods sold remain the property of the consignor, he is liable.

In the case of profits of a non resident from a business of which some operations are carried on outside the taxable territories and only some in the taxable territories, only proportionate profits are taxable under the Indian Income Tax Act. A non-resident manufactures goods in England and sells them in India his manufacturing profits shall have to be kept separate from his merchanting profits.

In respect of transactions, between India and Pakistan, of which some operations are carried on in one dominion and some in the other, in order to avoid double taxation an agreement between the two dominions was entered into on 10th December, 1947, according to which percentage of income of such transaction which each dominion is entitled to charge has been fixed.

SECTION 43

AGENT TO INCLUDE PERSONS TREATED AS SUCH

Any person employed by or on behalf of a person residing out of the taxable territories, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent:

Provided that where transactions are carried on in the ordinary course of business through a broker in the taxable territories in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transaction in the ordinary course of his business and not as a principal such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions :

Provided further that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

Explanation : A person, whether residing in or out of the taxable territories, who acquires, after the twenty-eighth day of February, 1947, whether by sale, exchange, or transfer, a capital asset in the taxable territories from a person residing out of the taxable territories shall, for the purposes of charging to tax the capital gain arising from

such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of the taxable territories.

In order that a resident person may be treated as the agent of a non-resident the existence of any one of the following conditions will be sufficient:—

- (i) the resident is employed by the non resident;
- (ii) there is a business connection between the resident and the non-resident;
- (iii) the non resident receives any income through the resident.

But the Income-tax Officer must serve on the resident person a notice of his intention of treating him (the resident) as agent of the non resident person. A broker in taxable territories, who carries out certain transactions on the account of a non-resident through a non-resident broker is not deemed agent in respect of such transactions, because it is difficult for the broker in the taxable territories to find out the amount of profit of the non resident principal and to calculate the amount of tax to be retained. In such cases non-resident principal is taxed direct under the provisions of section 42.

SECTION 44

Liability in cases of a discontinued firm or association

Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and

gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment

Where a business, profession or vocation belonging to a firm or association of persons is discontinued, the firm or the association of persons will be assessed on its profits as if it were still in existence and the tax may be recovered from the partners of the firm or the members of the association as the case may be, at the time of dissolution, either jointly or severally.

In respect of a Hindu undivided family which disappears by being divided before the time comes for its assessment Section 25A empowers the Income-tax Officer to compute profits (for the period up to the date of actual partition) as if the family was not divided and still continued to exist, and to recover the tax from the members who composed the family, jointly or severally.

SECTION 44A.

Liability to tax of occasional shipping.

The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of the taxable territories and carries on business in the taxable territories in any year as the owner or charterer of a ship (such person hereinafter in this chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

SECTION 44B,

RETURN OF PROFITS AND GAINS.

(1) Before the departure from any port in the taxable territories of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one sixth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, livestock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

SECTION 44C.

ADJUSTMENTS.

Nothing in this Chapter shall be deemed to prevent a principal from claiming, in the year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.

The above sections apply only to tramp ships—passenger or cargo vessels which do not run on regular lines but call occasionally at the ports in the taxable territories. The tax is levied on the principal who may be owner or the charterer of the ship. These sections are only applicable where the principal—

- (a) carries on business in taxable territories as the owner or charterer of a ship;
- (b) does not reside in the taxable territories; and
- (c) does not employ an agent from whom the tax would be recoverable under Section 42.

Section 44B lays down the method of filing of return of receipts on account of carriage of passengers, live-stock or goods, by the master of the ship and of assessment of income therefrom, and computation of tax payable thereon, by the Income-tax Officer. Section 44C provides for the adjustment of the tax so paid towards his regular assessment under other provisions of this Act.

SECTION 44D.

Avoidance of income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad.

(1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not resident or to a person resident but not ordinarily resident in Taxable territories acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of such first-mentioned person for all the purposes of this Act.

(2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in the taxable territories any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be

deemed to be the income of the first-mentioned person for all the purposes of this Act.

(3) Sub-sections (1) and (2) shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either—

(a) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or

(b) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(4) For the purposes of this section, an 'associated operation' means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets.

(5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident, or resident but not ordinarily resident, in the taxable territories, if—

(a) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first-mentioned person, or

(b) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or

(c) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or

will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which represent that income, or

(d) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(e) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income .

(6) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(7) For the purposes of this section—

(a) the expression ‘assets’ includes property or rights of any kind, and the expression ‘transfer’ in relation to rights includes the creation of those rights;

(b) the expression ‘benefit’ includes a payment of any kind;

(c) references to income of a person not resident or of a person not ordinarily resident in Taxable territories shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under sub-section (1) of Section 23A, include references to so much of the income of the company for that year or period as is equal to the amount deemed to have been distributed to that person;

(d) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;

(e) any body corporate incorporated outside the taxable territories shall be treated as if it were resident out of the taxable territories whether it is so resident or not.

(8) The provisions of this section shall apply for the purposes of assessment to income-tax and super-tax for the year ending on the 31st day of March, 1940, and subsequent years, and shall apply, in relation to transfers of assets and associated operations whether carried out before or after the commencement of the Indian Income-tax (Amendment) Act, 1939.

(9) Where any person has been charged to tax on any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

Comment already given under Section 16.

SECTION 44E.

AVOIDANCE OF TAX BY CERTAIN TRANSACTIONS IN SECURITIES

(1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as 'the owner') agrees to sell or transfer those securities, and by the same or any collateral agreement—

(a) agrees to buy back or re-acquire the securities, or.

(b) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person

(2) The references in sub-section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.

(3) Where any person carrying on a business which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(a) agrees to sell back or re-transfer the securities, or

(b) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(4) Sub-section (3) shall have effect, subject to any necessary modifications, as if it related to selling back

or re-transferring the securities included references to selling or transferring similar securities.

(5) For the purpose of this section—

(a) the expression 'interest' includes a dividend;

(b) the expression 'securities' includes stocks and shares;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(6) The Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days,) in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities; and if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

SECTION 44F.

Avoidance of tax by sales cum-dividend.

(1) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twentyeight days) required by the notice.

(2) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent. of the amount of the income-tax or super-tax for any year which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income-tax or super-tax, then those securities shall be

deemed to be securities to which sub-section (3) applies.

(3) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued.

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax, or that the provisions of Section 44E have been applied in his case in respect of such income.

(4) If any person fails to furnish any statement or particulars required under this section, or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of the section, is to be deemed to form part of the person's total income for the purposes of income-tax or super-tax.

(5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

(6) For the purposes of this section the expression 'securities' includes stocks and shares.

Comment already given under section 16.

SECTION 45

TAX WHEN PAYABLE

Any amount specified as payable in a notice of demand under sub-section (3) of Section 23A or under Section 29 or an order under Section 31, or Section 33 shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under Section 30, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of :

Provided further that where an assessee has been assessed in respect of income arising outside the taxable territories in a country the laws of which prohibit or restrict the remittance of money to the taxable territories, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into the taxable territories, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section income shall be deemed to have been brought into the taxable territories if it has been utilized or could have been utilized for the purposes of any expenditure actually in-

curred by the assessee without the taxable territories or if the income whether capitalized or not has been brought into the taxable territories in any form.

SECTION 46

MODE AND TIME OF RECOVERY

(1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

(1A) For the purposes of sub-section (1), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue :

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908 a Civil Court has for the purpose of the recovery of an amount due under a decree.

(3) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the state the Income-tax Officer may proceed to recover the amount due by such process

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(5) If any assessee is in receipt of any income chargeable under the head "Salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sum so deducted to the credit of the Central Government, or as the Central Board of Revenue directs.

(5 A) The Income-tax Officer may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income-tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Income-tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of arrears of income-tax and

penalty or the whole of the money when it is equal to or less than that amount.

The Income-tax Officer may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice

Any person making any payment in compliance with a notice under this subsection shall be deemed to have made the payment under the authority of the assessee and the receipt of the Income-tax Officer shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.

Any person discharging any liability to the assessee after receipt of the notice referred to in this sub-section shall be personally liable to the Income-tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties, whichever is less.

If the person to whom a notice under this subsection is sent fails to make payment in pursuance thereof to the Income-tax Officer, further proceedings may be taken by and before the Collector on the footing that the Income-tax Officer's notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to sub-Section (2) of Section 46.

Where a person to whom a notice under this subsection is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Income-tax Officer:

(6) If the recovery of income-tax in any area has been entrusted to a State Government under Article 258 (1) of the Constitution the State Government may direct with respect to that area or any part thereof, that income-tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of Section 42 or of the proviso to Section 45, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act:

Provided that where the sum payable is allowed to be paid by instalments the period of one year herein referred to shall be reckoned from the date on which the last of such instalments was due.

(8) For the purposes of this section, the expression "Collector" shall include a Collector in Pakistan and the Income-tax Officer may forward a certificate under sub-Section (2) to a Collector in Pakistan through the Central Board of Revenue of Pakistan, if the assessee has property in the district of the Collector.

(9) Where a Collector in the taxable territories receives through the Central Board of Revenue of India a certificate under the signature of an Income-tax Officer in Pakistan, the Collector shall proceed to recover the amount specified therein in the manner in which he would proceed to recover the amount specified in a certificate received from an Income-tax Officer in the taxable territories, and shall remit any sum so recovered by him to the Income-tax Officer in Pakistan, after deducting

his expenses in connection with the recovery proceedings.

(10) The provisions of sub-Section (8) and (9) shall remain in force only so long as there are in force similar provisions in this Act as in force as part of the law of Pakistan or under any other similar Act forming part of the law of Pakistan, for the recovery of tax by a Collector in Pakistan on receipt of a certificate from an Income-tax Officer in the taxable territories

Comment already given under Section 16.

SECTION 47

RECOVERY OF PENALTIES

Any sum imposed by way of penalty under the provisions of sub section (2) of Section 25, Section 28, sub-section (6) of Section 44E, sub-section (5) of Section 44F or sub-section (1) of Section 46, and any interest payable under the provisions of sub-sections 4), (6), (7) or (8) of Section 18A shall be recoverable in the manner provided in this Chapter for recovery of arrear of tax.

Section 45 lays down as to how and when the amount of tax demanded from an assessee under the provisions of the various sections of this Act should be paid by him. It also provides that in the following two cases payment may be postponed :—

- (i) When the assessee has presented an appeal under Section 30 and the Income tax Officer in his discretion has agreed that the assessee may not pay the amount of tax due from him until the appeal is disposed of.

- (ii) When an assessee has been assessed in respect of income arising outside the taxable territories and the same cannot be remitted to taxable territories on account of some political or exchange difficulties, until such difficulties are removed.

Section 46 provides that when an assessee is in default in the payment of tax due from him the Income tax Officer may impose a penalty on him and may enhance it from time to time in case of continuous default. This section lays down the various procedures which the Income-tax Officer may adopt to recover the amount of tax and penalty, if any, due from the assessee-in-default.

Section 47 provides that the penalty imposed under the provisions of Sections 25 (2), 28, 44E (6), 44F (5) or 46 (1) on, or any interest payable in respect of advance payment of tax under Section 18A by an assessee is recoverable in the same manner as is provided in Section 46 above.

SECTION 48.

REFUNDS

(1) If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess.

(2) The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers if satisfied to the like effect shall cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income.

(4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income Tax (Amendment) Act 1939, which he would not be entitled to claim but for the passing of that Act.

SECTION 48A

GENERAL POWER TO MAKE REFUNDS

Repealed by Act 7 of 1939.

SECTION 49

Relief in respect of United Kingdom Income-tax.

(1) If any person who has paid by deduction under Section 18 or otherwise Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid by deduction or otherwise United Kingdom income-tax for the corresponding year in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of Section 27 of the Finance Act 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section :

Provided that in no case shall the rate at which such refund is calculated exceed half the Indian rate of tax appropriate to the income of the person entitled to relief.

(2) In sub-Section (1)—

(a) the expression “Indian income-tax” means income-tax and super-tax charged in accordance with the provisions of this Act;

(b) the expression “Indian rate of tax” means the amount of Indian income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act but before deduction of any relief

due to him under this section divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of this Act, added to the amount of Indian super-tax before deduction of any relief due to the claimant under this section divided by his total income;

(c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts;

(d) the expression "appropriate rate of United Kingdom income-tax" has the meaning assigned to that expression in Section 27 of the Finance Act, 1920, as amended by the Finance Act, 1927.

SECTION 49 A

Relief in respect of Part B State and Dominion Income-tax

(1) The Central Government may, by notification in the official Gazette, make provision for the granting of relief in respect of income on which have been paid both income-tax (including super-tax) under this Act and either Dominion income-tax in one or more countries or Burma Income-tax.

(2) For the purposes of this section "Dominion income-tax" means any income-tax or super-tax charged under any law in force in any part B State or in any part of His Majesty's Dominions including the United Kingdom where the laws of that State or part provide for relief in

respect of tax charged on income both in that State or part and in the taxable territories which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

(3) For the purposes of this section 'Burma Income-tax' means any income-tax or super-tax charged under any law in force in Burma where the laws of Burma provide for relief in respect of tax charged on income both in Burma and in the taxable territories which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

SECTION 49AA

Agreement for avoidance of double taxation in India and Pakistan or the United Kingdom.

The Central Government may enter into an agreement with Pakistan or the United Kingdom for the avoidance of double taxation of income, profits and gains under this Act and under the corresponding law in force in Pakistan or the United Kingdom, and may, by notification in the official gazette, make such provision as may be necessary for implementing the agreement.

SECTION 49B

Income-tax on company's dividend deemed to have been paid by share-holder.

Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to any of the persons specified in Section 3 who

is a shareholder of a company which is assessed to income-tax in the taxable territories or elsewhere, such person shall, if the dividend is included in his total income, be deemed in respect of such dividend himself to have paid income-tax (exclusive of super-tax) at the rate applicable to the total income of the company for the financial year in which the dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company is liable to pay income-tax bears to the whole income of the company.

SECTION 49C

Relief granted to a company to be deemed relief granted to shareholder

Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to a shareholder of a company which has obtained the relief referred to in Section 49 or granted under section 49A or under the India and Burma (Income-tax Relief) Order, 1936, the shareholder shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted in respect of income-tax only to the company for the financial year preceding the year in which the dividend was paid, credited, or distributed or is deemed to have been paid, credited or distributed.

(2) If the rate at which a shareholder is deemed under sub-section (1) to have obtained relief exceeds the

rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or Order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under section 23 or section 34 or by setting it off against any relief due to him under section 48.

SECTION 49 D

Relief in respect of tax charged in country not providing for relief in respect of British Indian income-tax.

If any person who has paid by deduction or otherwise Indian income-tax for any year in respect of any income arising without the taxable territories in a country the laws of which do not provide for any relief in respect of income-tax charged in the taxable territories proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Indian income-tax payable of a sum equal to one-half of such Indian income-tax or to one-half of such tax payable in the said country, whichever is the less.

Explanation. The "Indian Income-tax" in this section means income-tax and super-tax charged in accordance with the provisions of this Act.

SECTION 49E

Power to set off amount of refunds against tax remaining payable

Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Appellate Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

SECTION 49F

Power of representative of deceased person or person disabled to make claim on his behalf

Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 or 49 is unable to receive such refund or to make such claim, his executor, administrator or other legal representative or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

SECTION 50

LIMITATION OF CLAIMS FOR REFUND

No claim to any refund of income-tax or super-tax under this Chapter shall be allowed, unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into the taxable territories.

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, the claim shall not be allowed unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (11) of Section 2 in which the income arose on which the tax was recovered whichever period may expire later :

Provided further that a claim to refund under Section 49 of tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939 may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.

Section 48 provides that when the tax paid (including super-tax) exceeds the amount chargeable, the owner of the

income is entitled to a refund of the excessive amount. Refunds are necessitated generally by the system of "taxation at source" as in the case of dividends, and "deduction at source" as in the case of interest on securities, salaries, and certain other payments. In both these groups of cases the average rate of tax, if any, appropriate to the "total income" or the "total world income" as the case may be, of the recipient of the income is not known at the time the tax is assessed or deducted. Section 18 (9) makes it obligatory upon the person deducting income-tax or super-tax to issue a certificate specifying the amount of the tax deducted from the income concerned and the rate at which it has been deducted; and similarly section 20 requires the principal officer of a company distributing dividends to issue to shareholders a certificate stating that the company has paid, or will pay, income-tax on the profits that are being distributed. These certificates will ordinarily be accepted by Income-tax Officers as proof that tax has been paid.

Dividends are not exempt from income tax in the hands of the shareholder, but if the dividend is included in his total income the full amount of income-tax appropriate to such dividend is deemed under section 18 (5) to have been paid on behalf of the shareholder. (sec. 49B).

The necessity for making a claim for the refund of tax on interest on Government securities (and also in respect of the tax on salaries paid to non residents) can in many cases be avoided by obtaining a certificate from the Income-tax Officer under Section 18 (3) to the effect that the "total income" or "total world income" of the recipient is not liable to tax or is liable only at a rate lower than the maximum rate.

The amount of refund due to an assessee instead of being paid to him may be set off against any tax remaining payable by him. (Sec. 49E). A representative of a deceased person or of a person who is disabled (physically or legally) is entitled to make claim for, and receive, refund on behalf of such person (section 49F). The application for refund must be made with-

in four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was brought into the taxable territories (Section 50). In other words it means it must be made within four years of the last day of the financial year in which the income in respect of which refund is claimed was included in the total income of the assessee.

SECTION 50A

APPEAL AGAINST REFUSAL OF REFUND

Omitted by Section 62 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939).

SECTION 51

Failure to make payments or deliver returns or statements or allow inspection.

If a person fails without reasonable cause or excuse—

(a) to deduct and pay any tax as required by Section 18 or under sub-section (5) of Section 46;

(b) to furnish a certificate required by sub-section (9) of section 18 or by Section 20 to be furnished;

(c) to furnish in due time any of the returns mentioned in Section 19A, Section 20A Section 21 sub section (2) of section 22, or Section 38;

(d) to produce, or cause to be produced on or before the date mentioned in any notice under sub-section

(4) of Section 22, such accounts and documents as are referred to in the notice;

(e) to grant inspection or allow copies to be taken in accordance with the provisions of Section 39; he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues,

SECTION 52

False statement in declaration.

If a person makes a statement in a verification mentioned in Section 19A or Section 20A or Section 21 or Section 22 or sub-section (2) of Section 26A, or sub-section (3) of Section 30, or sub-section (3) of Section 33 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

SECTION 53

Prosecution to be at the instance of Inspecting Assistant Commissioner.

(1) A person shall not be proceeded against for an offence under Section 51 or Section 52 except at the instance of the Inspecting Assistant Commissioner.

(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence.

Reference of Sections 51 and 52 has already been made under Section 28. The Inspecting Assistant Commissioner has the authority of compounding any cases under these sections, any time before or after instituting the proceedings.

Before proceeding against a person for an offence under Section 51 or 52 permission of the Inspecting Assistant Commissioner must be obtained.



SECTION 54

DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT

(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a

demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in this section shall apply to the disclosure—

(a) of any such particulars for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

(d) of any such particulars to a Civil Court in any suit or proceeding to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(e) of any such particular as the comptroller and Auditor General of India for the purpose of enabling him to discharge his functions under the constitution, or

(f) of any such particulars to any officer appointed

by the comptroller and Auditor General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(g) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an Officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the constitution, when exercising its functions in relation to any matter arising out of any such inquiry, or

(gg) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a lawyer or registered accountant, to the authority referred to in sub-section (3) of Section 61 when exercising the functions referred to in that sub-section, or

(h) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or

(i) of such facts to an authorised officer of the United Kingdom, or of any part of His Majesty's Dominions which has entered into an agreement with India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under Section 49 or Section 49 AA of this Act to be given, or

(j) of such facts, to an officer of a State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it, or

(k) of such facts, to any authority exercising powers

under the Sea Customs Act, 1878 or any Central Act imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(l) of such facts, to any person charged by law with the duty of inquiring into the qualifications of electors as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(m) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established, or

(n) of such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics of International investments and balance of payments, or

(o) of such information as may be required by any officer or department of the Central Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant.

(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under Section 25A or Section 26A, or to the giving of evidence by a public servant in respect thereof.

(5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

Section 54 provides that all information supplied by the assessee to the Income-tax Department in the form of any returns, statements etc. must be kept strictly confidential. No

information can be disclosed to any person in the world except for certain limited purposes as provided in this section itself. No court of law can call for any information from the Income-tax Department in respect of any assessee nor can it ask any servant of the Department to give evidence based on the information which came to his knowledge as an employee of the Income-tax department. The real object of this section is to make the assessee feel that no statement made by him in connection with his income-tax assessment will ever be used against him in any other matter, and thus to encourage him to make a true and frank statement.

If a public servant gives out any such information he is liable to be punished with imprisonment which may extend to six months, and shall also be liable to fine. "Public servant" here refers to the public servant to whom disclosure of information has been made. Prosecution under this section can be instituted only after the previous sanction of the Commissioner of Income-tax.

During the course of assessment proceedings or hearing of cases in Income-tax courts other persons who are not concerned with the particular assessment are not allowed to be present. It is improper even for a superior officer of the department to be present at the time of the assessment of a person and to ask questions from him.

The restrictions, of course, do not apply in the case of enquiry by the Investigation Commission.

SECTION 55

CHARGE OF SUPER-TAX

In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, local authority, unregistered firm or other association of persons not being a registered firm or the partners of the firm or members of the association individually, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Central Act:

Provided that where under the provisions of clause (b) of sub-section (5) of Section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself :

Provided further that, where the profits and gains of an unregistered firm or other association of persons not being a company have been assessed to super-tax, super-tax shall not be payable by a partner of the firm or a member of the association, as the case may be in respect of the amount of such profits and gains which is proportionate to his share.

Super-tax is merely an additional duty of income-tax. Like income tax it is charged for any year on the total income of the previous year of any individual, Hindu undivided family company, local authority, unregistered firm or other association of persons not being a registered firm, or the partners of the firm or members of the association individually.

The word 'income tax' includes Super-tax, though all the provisions that are applicable to income-tax are not applicable to super-tax.

Super-tax on Companies : Companies have also to pay super-tax. They have to pay super tax at a flat rate on their entire income. The first slab of Rs. 25,000, which is exempt in case of other assesseees is not exempt in the case of companies.

Unlike income-tax super-tax paid by a company is not deemed to be paid on behalf of the shareholders. Benefit of super-tax paid by a company on its profits is not given to the shareholders in their assessment. Super-tax on companies is treated on different footing. It is treated as a corporation tax charged from a company in lieu of special privileges granted to it in the form of corporate finance and limited liability. Super-tax on local authorities is levied and treated in the same way as on companies.

Hindu undivided families are treated for purposes of super-tax, as for income-tax purposes, as separate assesseees.

Unregistered firms and other associations of persons are also treated as separate assesseees. Where, however, an unregistered firm itself is not assessed to super-tax (e.g. if its assessable profits are less than Rs. 25,000) or where under Section 23 (5) (b) an unregistered firm has been assessed as a registered firm, super-tax is payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm. Similarly members of an association of persons will be liable to super-tax on the portions of income which they are entitled to receive from such an association only if the association is not charged to super-tax.

Registered firms are not assessed to super-tax, but the partners are assessed to super tax on their partnership profits.

Under Section 4 of this Act it has been stated as to according to the notification of the Central Government (under Section 60) (i) what incomes are excluded from total income altogether, (ii) what incomes are included in total income but are exempt

from both income-tax and super-tax; (iii) what incomes are included in total income but are exempt from income-tax and not from super tax; and (iv) what incomes are exempt from super tax but not from income tax. They may be referred here in connection with this section, The following exemptions which are granted from income-tax are not granted from super tax:—

(a) Premium on the life insurance of the assessee or his wife or husband (Section 15).

(b) Contribution by Government servants towards Government Family Pension Fund or Government Provident Fund. [Section 7 (1)].

(c) Employees' contribution to recognized provident fund or interest credited to accumulated balance in a recognized provident fund, or accumulated balance paid to an employee from a recognized provident fund after continuous service of five years. (Section 58 F and G.)

(d) Interest from tax-free securities of Central or a State Government. (Section 8).

SECTION 56

TOTAL INCOME FOR PURPOSES OF SUPER-TAX

Except in cases to which Section 15A applies or to which by clause (a) of the proviso to sub-sections (3) and (4) of Section 25 those sub-sections do not apply and subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, local authority unregistered firm or other association of persons shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

SECTION 57

NON-RESIDENT PARTNERS AND SHAREHOLDERS

(*Omitted*)

SECTION 58

APPLICATION OF ACT TO SUPER-TAX

(1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in Section 3, the second proviso to sub-section (1) of 7, the second and third provisos to Section 8 clauses (a) and (b) of sub-section (2) of Section 14 and Section 15, 15A, 19, and 20 and the first proviso to sub-section (1) of Section 41 and Section 58F and sub-section (2) of Section 58G shall apply, so far as may be, to the charge, assesment, collection and recovery of super-tax.

(2) Save as provided in sub-sections (2), (2A), (2B), (3B), (3C), (3D) and (3E) of Section 18, and Section 58H super-tax shall be payable by the assessee direct.

SECTION 58A

DEFINITIONS

In this Chapter, unless there is anything repugnant in the subject or context,—

(a) a “recognised provident fund” means a provi-

dent fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(b) an "employer" means—

(i) a Hindu undivided family, company, firm or other association of persons, or

(ii) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under Section 10, maintaining a provident fund for the benefit of his or its employees;

(c) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(d) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;

(e) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time;

(f) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest;

(g) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund; and

(h) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund.

SECTION 58B.

The according and withdrawal of recognition

(1) The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in Section 58C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(3) An order withdrawing recognition shall take effect from the day on which it is made.

(3A) An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first mentioned fund.

(4) An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a provident fund may appeal, within sixty days of such order, to the Central Board of

Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

SECTION 58C

Conditions to be satisfied by a Recognised Provident Fund

(1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Central Government may, by rule, prescribe—

(a) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in the taxable territories :

Provided that the Commissioner may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in the taxable territories notwithstanding that a proportion not exceeding ten per cent. of the employees is employed outside India.

(b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund :

Provided that an employee who retains his employment while serving in the Armed Forces of the Union

or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance, 1940, may, notwithstanding that he receives from the employer no salary or a salary less than he would have received had he not entered the Armed Forces of the Union or been so taken into or employed in the national service, contribute to the fund during his service in the Armed Forces of the Union or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered the Armed Forces of the Union or been taken into or employed in the national service.

(c) Subject to the provisions of Section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(d) The fund shall consist of contributions as above specified and of donations, if any, received by the trustees, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions; donations and accumulations of securities purchased therewith, and of any capital gains arising from the sale, exchange or transfer of capital assets of the fund, and of no other sums.

(e) The fund shall be vested in two or more trustees or in the Official Trustees under a trust which shall not be revocable save with the consent of all the beneficiaries.

(f) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

(g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employer maintaining the fund.

(h) 'Save as provided in clause (g), or in accordance with such conditions and restrictions as the Central Government may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

SECTION 58D

Power to relax restrictions of employer's contributions in certain cases.

Subject to any rules which the Central Government may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of Section 58C—

(a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem; and

(b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

SECTION 58E.

Annual accretion deemed to be income received.

The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in Section 58F, shall be liable to income-tax and super-tax:

Provided that, for the purpose of sub-section (3) of Section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

SECTION 58F.

Exemption of annual accretion from income-tax.

(1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year or six thousand rupees, whichever is less

(2) Interest credited on the accumulated balance of any employee in a recognised provident fund shall be exempt from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and in so far as it is allowed at a rate not exceeding such rate as the Central Government may, by notification in the official Gazette, fix in this behalf.

(6 per cent. fixed for the time being)

SECTION 58G

Exemption of Accumulated Balance from Income-tax and Super-tax

(1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under Section 58E up to the first day of April, 1933,

if the Indian Income-tax (Second Amendment) Act, 1933 had come into force on the 15th March, 1930.

(2) Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and shall be excluded from the computation of his total income :

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

(3) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (2) the Income-tax Officer shall calculate the total of the various sums of income-tax and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

SECTION 58H

Deduction at source of Income-tax Payable on Accumulated Balances Due

The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (3) of Section 58G and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of Section 58J, and sub-sections (4) to (9) of Section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries",

SECTION 58I

Account of Recognised Provident Fund

(1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

SECTION 58J

Treatment of Balances in Newly Recognised Provident Funds

(1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without re-

gard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year, and, for the purposes of assessment the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (h) of sub-section (1) of Section 58C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3) shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

SECTION 58K.

TREATMENT OF FUND TRANSFERRED BY EMPLOYER TO TRUSTEE

(1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the employer within the meaning of clause (xii) of sub-section 2 of Section 10, incurred in the year in which the accumulated balance due to the employee is paid.

SECTION 58L.

PROVISIONS RELATING TO RULES

(1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of Section 59.

(2) In addition to any power conferred by this Chapter, the Central Government may make rules—

(a) prescribing the statements and other information to be submitted with an application for recognition;

(b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;

(c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;

(d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(e) generally to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

Brief reference about treatment of different classes of Provident Funds has been made under income-tax on salaries (Section 7), Pages 74-79.

SECTION 58M.

APPLICATION OF THIS CHAPTER

This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies.

SECTION 58N.

DEFINITIONS

In this Chapter, unless there is anything repugnant in the subject or context,—

(a) 'approved superannuation fund' means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Central Board of Revenue in accordance with the provisions of this Chapter,

(b) 'employer', 'employee' and 'contribution' have, in relation to superannuation funds, the meanings assigned to those expressions in Section 58A in relation to provident funds;

(c) 'ordinary annual contribution' means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

SECTION 58O.

APPROVAL AND WITHDRAWAL OF APPROVAL

(1) The Central Board of Revenue may accord approval to any superannuation fund or any part of superannuation fund which in its opinion complies with the requirements of Section 58P, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Central Board of Revenue shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Central Board of Revenue shall neither refuse nor withdraw approval to any superannuation fund or any part of superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter.

SECTION 58P.

CONDITIONS FOR APPROVAL

In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied, namely:—

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in the taxable territories;

(b) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependents of persons who are or have been such employees on the death of those persons; and

(c) the employer in the trade or undertaking shall be a contributor to the fund:

Provided that the Central Board of Revenue may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund—

- (i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or
 - (ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or
 - (iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the taxable territories.
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SECTION 58Q.

APPLICATION FOR APPROVAL

(1) An Application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Central Board of Revenue may require such further information to be supplied as it thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

SECTION 58R.

Exemption of superannuation fund from income-tax

Income derived from investments or deposits of an approved superannuation fund and any capital gains arising from the sale, exchange or transfer of capital assets of

such fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of Section 15 apply.

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution :

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Central Board of Revenue may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Central Board of Revenue thinks proper.

SECTION 58S.

Treatment of repaid contributions.

(1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted

by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct.

SECTION 58T.

Deduction from pay of, and contributions on behalf of, employee to be included in return under Section 21.

Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under Section 21.

SECTION 58U.

Liabilities of trustees on cessation of approval of fund.

If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

(a) on account of returned contributions (including interest on contributions, if any), and

(b) in commutation or in lieu of annuities, in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

SECTION 58V.

Particulars to be furnished in respect of superannuation funds.

The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice—

(a) furnish to the Income-tax officer a return containing such particulars of contributions made to the fund as the notice may require;

(b) prepare and deliver to the Income-tax Officer a return containing—

- (i) the name and place of residence of every person in receipt of an annuity from the fund;
- (ii) the amount of the annuity payable to each annuitant;
- (iii) particulars of every contribution (including interest on contribution, if any) returned to the employer or to employees; and
- (iv) particulars of sums paid in commutation or in lieu of annuities:

(c) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Central Board of Revenue may reasonably require,

SECTION 59

POWER TO MAKE RULES

(1) The Central Board of Revenue may, subject to the control of the Central Government make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of the taxable territories or for such part thereof as may be specified.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—

(i) incomes derived in part from agriculture and in part from business;

(ii) persons residing out of the taxable territories;

(b) prescribe the procedure to be followed on applications for refunds;

(c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under Section 27 of the Finance Act, 1920, or under Section 49 of this Act.

(d) prescribe the year which, for the purposes of relief under Section 49, is to be taken as corresponding to the year of assessment for the purposes of Section 27 of the Finance Act 1920; and

(e) provide for any matter which by this Act is to be prescribed.

(3) In cases coming under clause (a) of subsection (2), where the income, profits and gains liable to

tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

(a) prescribe methods by which an estimate of such income, profits and gains may be made, and

(b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax;

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) Rules made under this section shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Act.

This section gives power to the Central Board of Revenue to make rules, firstly for carrying out the purposes of the Income-tax Act and secondly for the determination of the profits and gains from the various sources of income. Rules so framed must be approved by the Central Government. Before making any rules the draft of the rules must be published for the information of those persons who are likely to be affected by them so that they may make objections or suggestions, if any, they consider necessary. Any objections or suggestions received from such persons must be taken into consideration both by the Central Board of Revenue who makes the rules and by the Central Government who approves them, before so making or

approving. The rules framed must be published in the Official Gazette and thereupon they have the effect as if enacted in the Act itself.

SECTION 60

POWER TO MAKE EXEMPTION ETC.

(1) The Central Government may, by notification in the official Gazette make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months, or a payment which is under the provisions of sub-section (1) of section 7 a profit in lieu of salary his income is assessed, at a rate higher than that at which it would otherwise have been assessed the Central Government may grant the appropriate relief.

(3) After the commencement of the Indian Income-tax (Amendment) Act, 1939, the power conferred by sub-section (1) shall not be exercisable except for the purpose of rescinding an exemption, reduction or modification already made.

The power granted to the Central Government by sub-section (1) of this section, of making an exemption, reduction in rate or other modification, has been withdrawn by sub-section (3) of the same section. After the commencement of the Indian Income-tax (Amendment), Act, 1939, the power of granting exemption etc. cannot be exercised by the Central Government. Sub-section (1) is now there on the Statute book to be utilised

only for the purpose of revoking any exemptions etc. which have already been granted.

Exemptions so far notified under Section 60 of the Indian Income-Tax Act, 1922, by the Central Government are classed as under :—

- (i) Income excluded from total income altogether;
- (ii) Income included in total income but exempt from both income-tax and super-tax;
- (iii) Income included in total income, but exempt from income-tax and not from super-tax;
- (iv) Income exempt from super-tax, but not from income-tax.

Lists of all these four classes of incomes have been given under Section 4, in this book.

Modifications under Section 60 of the Indian Income-tax Act, made by the Central Government are :—

(I) An assessee deriving income from a railway or tramway business may at his own option require that in computing the profits or gains of such business, the following allowance shall be made in lieu of the allowances specified in clause (v), clause (vi) and clause (vii) of sub-section (2) of Section 10 of the said Act, namely, the actual expenditure incurred by the assessee during the previous year on repairs, replacements and renewals of plant, machinery, buildings and furniture which are the property of the assessee :

Provided that an assessee who in any year has exercised the option herein before conferred shall not be entitled save with the consent of the Commissioner of Income-tax to withdraw that option in any subsequent year :

Provided further that nothing in this notification shall apply to an electric tramway.

(II) Where owing to the fact that the total income of an assessee has reached or exceeded a certain limit, he is liable to pay super-tax or to pay super-tax at a higher rate, the amount payable by him on account of income-tax and super-tax

shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely—

(a) the amount which would have been payable on account of income-tax and super-tax if his total income had been a sum less by one rupee than that limit, and

(b) half the amount by which his total income exceeds that sum.

According to Section 7 of the Indian Income-tax Act advance of salary received by an employee is deemed to be salary in his hands on the date the advance is paid to him and becomes chargeable to tax. In the same way accumulated balance in an unrecognized provident fund becomes chargeable to tax in the year in which it is paid to the employee. As a result of this the rate of tax chargeable from the assessee in that year would be higher than the one applicable to his total income in normal course. In order to mitigate such a hardship the Central Government is empowered to grant relief to the assessee in determining the rate of tax. In calculating such a relief to be granted to an assessee in respect of any year any advantage gained by him in a previous year in which part of his salary was short-paid will be taken into account.

SECTION 60A.

Power to Make Exemption Etc. In Relation to Merged Territories.

If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly, or removing any difficulty, that may arise as a result of the extension of this Act to the merged territories or to any Part B State the Central Government may, by general or special order, make an exemption, reduction in rate or other modification in respect of income-tax in favour of

any class of income, or in regard to the whole or any part of the income of any person or class of persons:

Provided that the power conferred by this section shall not be exercisable after the 31st day of March, 1955, except for the purpose of rescinding an exemption, reduction or modification already made.

This section has been inserted in the Act in order to enable the Central Government to remove any hardship or difficulty that may arise as a result the of extension of Indian Income-tax Act to the merged States.

SECTION 61

Appearance by Authorised Representative.

(1) Any assessee, who is entitled or required to attend before the Appellate Tribunal or any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 37 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or Income-tax practitioner, and not being disqualified by or under sub-section (3).

(2) In this section,—

(i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings;

(ii) “lawyer” means a Barrister-at-Law or Solicitor or any other person entitled to plead in any Court of law in the taxable territories;

(iii) “accountant” means a registered accountant

enrolled in the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932, or a holder of a restricted certificate under Restricted Certificate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue;

(iv) "Income-tax practitioner" means—

(a) any person who, before the 1st day of April, 1938, in the taxable territories, or before the 1st day of April, 1949 in any of the merged territories or before the 1st day of April 1st 1950, in any Part B State other than the State of Jammu and Kashmir attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee;

(b) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue; or

(c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.

(3) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under subsection (1); and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1):

Provided that—

(a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,

(b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and

(c) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred, until the disposal of the appeal.

The assessee, if he wishes or if called upon to attend, may do so by a deputy authorised in writing, unless his personal attendance is required under Section 37 for examination on oath or affirmation. The right of the assessee to appear not in person but through an agent has been restricted to persons belonging to the classes detailed in the section and no other person may appear in any proceedings under the amended Act.

The list and qualification of the persons who are authorised to appear on behalf of an assessee is given in sub-section (2) above. For the purpose of clause (iii) of sub-section (2) the following bodies are recognized by the Central Board of Revenue:—

1. The Institute of Chartered Accountants in England and Wales.
2. The Society of Accountants in Edinburgh.
3. The Institute of Accountants and Actuaries in Glasgow.
4. The Society of Accountants in Aberdeen.
5. The Institute of Chartered Accountants in Ireland.
6. The Society of Incorporated Accountants and Auditors, London.

The following accountancy examinations are recognised by the Central Board of Revenue for the purpose of sub-clause (b)

of clause (iv) of sub-section (2) of Section 61 of the Indian Income-tax Act, 1922:—

1. Government Diploma in accountancy examination conducted by the Accountancy Diploma Board, Bombay;

2. Diploma in Commerce issued under the authority of the Provincial Governments in Madras, Bengal, Punjab and Delhi;

3. The First Examination conducted by the Central Government under the Auditor's Certificate Rules, 1932.

4. Final examination conducted by the Association of Certified and Corporate Accountants, London.

5. The Bombay Government Diploma in Commerce provided that the diploma-holder took 'Accountancy' as his optional subject for the diploma course and has also passed the Matriculation Examination of a recognised university or an equivalent examination.

6. The Diploma in Accountancy awarded by the Sydenham College of Commerce and Economics, Bombay, provided that the diploma-holder has passed the Matriculation Examination of a recognised university or an equivalent examination.

7. Senior All-India Diploma in Commerce awarded by the All-India Board of Technical Studies in Commerce and Business Administration of the All India Council for Technical Education, Government of India, Education Department, New Delhi, provided, that the Diploma holder took 'Advanced Accountancy and Auditing' as his optional subject for the diploma course.

The following educational qualifications are prescribed by the Central Board of Revenue for the purposes of sub clause (c) of clause (iv) of sub-section (2) of Section 61 of the Indian Income tax Act, 1922:—

A degree in Commerce, Law, Economics or Banking including Higher Auditing conferred by any of the following Universities:—

1. Indian Universities:

2. Rangoon University:
3. English and Welsh Universities:
4. Scottish Universities:
5. Irish Universities:

The following persons are disqualified to represent an assessee :—

(1) A person who has been dismissed from Government service after 1st of April, 1938;

(2) A lawyer or an accountant who is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs;

(3) Any person who is found guilty of misconduct in connection with any income-tax proceedings by the Commissioner of Income-tax.

SECTION 62

RECEIPT TO BE GIVEN

A receipt shall be given for any money paid or received under this act.

SECTION 63

SERVICE OF NOTICE

(1) A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and, in the case of any other association of persons be addressed to the principal officer thereof.

SECTION 64

PLACE OF ASSESSMENT.

(1) Where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more States than one, by the Commissioners concerned, or if they are not in agreement, by the

Central Board of Revenue :

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views :

Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under sub-section (1) of Section 22 and has stated therein the principal place wherein he carries on his business, profession or vocation, or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of Section 22 or under Section 34 for the making of a return :

Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made.

(4) Notwithstanding any thing contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

(5) The provisions of sub-section (1) and sub-section (2) shall not apply and shall be deemed never at any time to have applied to any assessee—

(a) on whom an assessment or re-assessment for the purposes of this Act has been, is being or is to be made in the course of any case in respect of which a Commissioner of Income-tax appointed with out reference to area under sub-section (2) of Section 5 is exercising the functions of a Commissioner of Income-tax, or

(b) where by any direction given or any distribution or allocation of work made by the Commissioner of Income-tax under sub-section (5) or Section 5, or in consequence of any transfer made under sub-section (7A) of Section 5, a particular Income-tax Officer has been charged with the function of assessing that assessee, or

(c) who or whose income is included in a class of persons or a class of incomes specified in any notification issued under sub-section (6) of Section 5, but the assessment of such persons, whether the proceedings for such assessment began before or after the 1st day of April, 1939, shall be made by the Income-tax Officer for the time being charged with the function of making such assessment by the Central Board of Revenue or by the Commissioner of Income-tax to whom he is subordinate, as the case may be.

SECTION 65

INDEMNITY

Every person deducting, retaining, or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

SECTION 66

Statement of case by Appellate Tribunal to High Court

(1) Within sixty days of the date upon which he is served with notice of an order under sub-section (4) of Section 33 the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court :

Provided that, if, in the exercise of its powers under sub section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

(2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the 'case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal

shall state the case and refer it accordingly.

(3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is timebarred, the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case :

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount over-

paid shall be refunded with such interest as the Commissioner may allow unless the High Court on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to Supreme Court makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to Supreme Court.

(7 A) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (2) or sub-section (3).

(8) For the purposes of this section "the High Court" means—

(a) in relation to any Part A State or Part B State the High Court for that State;

(b) in relation to Ajmer and Vindhya Pradesh the High Court at Allahabad;

(c) in relation to Bhopal, the High Court at Nagpur;

(d) in relation to Bilaspur, Delhi and Himachal Pradesh the High Court of Punjab;

(e) in relation to Coorg, the High Court at Madras;

(ee) in relation to Manipur and Tripura, the High Court of Assam;

(f) in relation to Kutch, the High Court at Bombay, and

(g) in relation to the Andaman and Nicobar Islands, the High Court at Calcutta.

SECTION 66A

References to be heard by Benches of High Courts and appeal to lie in certain cases to Supreme Courts.

(1) When any case has been referred to the High Court under Section 66, it shall be heard by a Bench of not less than two judges of the High Court, and in respect of such case the provisions of Section 98 of the Code of Civil procedure, 1908, shall so far as may be, apply notwithstanding anything contained in the Letters Patent or in any other law for the time being in force.

(2) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under Section 66 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of Section 66:

Provided further that the High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution of any Court subordinate to High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall

be given to the order of the Supreme Court in the manner provided in sub-section (5) and (7) of Section 66 in the case of a judgment of the High Court

These sections have already been partly dealt with under Section 33.

SECTION 67

BAR OF SUITS IN CIVIL COURT

No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

SECTION 67A.

COMPUTATION OF PERIODS OF LIMITATION.

In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

SECTION 67B.

Act to have effect pending legislative provisions for charge of income-tax.

If on the 1st day of April in any year provision has not yet been made by a Central Act for the charging of income-tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provisions proposed in the bill then before the Parliament, whichever is more favourable to the assessee, were actually in force.

APPENDIX I

The Finance Act, 1951.

Income-tax and super tax : (1) Subject to the provisions of sub-sections (3), (4) and (5), for the year beginning on the first day of April, 1951,—

(a) Income-tax shall be charged at the rates specified in part I of the first schedule increased in each case by a sur-charge for the purposes of the Union at the rate specified therein in respect of each such rate of income-tax, and

(b) Rates of super-tax shall, for the purposes of section 55 of the Indian Income Tax Act, 1922 (hereinafter referred to as "The Income-tax Act") be those specified in part II of the First Schedule, increased in the cases to which paragraphs A, B and C of that part apply, by a surcharge for the purposes of the Union at the rate specified therein in respect of each such rate of super-tax.

(2) In making any assessment for the year ending on the 31st day of March, 1952, there shall be deducted from the total income of an assessee in accordance with the provisions of Section 15A of the Indian Income-tax Act, an amount equal to one-fifth of the earned income, if any, included in his total income but not exceeding in any case four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March, 1952,—

(a) Where the total income of an assessee, not being a company includes any income chargeable under the head "Salaries" as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head "Interest on Securities" or any income from dividends in respect of which by virtue of Section 49 B of the Income-tax Act he is deemed himself to have paid the income-tax imposed under that Act, the income-tax payable by the assessee on that part of his total income which consists of

such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Finance Act, 1950 on his total income the same proportion as the amount of such inclusions bears to his total income.

(b) Where the total income of an assessee, not being a company includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of Section 18 of the Income-tax Act, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable, according to the rates applicable under the operation of the Finance Act 1950, on his total income the same proportion as the amount of such inclusion bears to his total income.

(4) In making any assessment for the year ending on the 31st day of March, 1952,—

(a) Where the total income of a company includes any profits and gains from life insurance business, the super-tax otherwise payable by the company on the whole of such total income shall be reduced by an amount which bears to that super tax the same proportion as the amount of such inclusion bears to its total income or by an amount computed at the rate of—

(i) two annas in the rupee in the case of a mutual insurance company as defined in Section 95 of the Insurance Act, 1933 and

(ii) one and a half annas in the rupee in the case of any other company.

on the amount of such inclusion, whichever is less ;

(b) Where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of such taxes payable on his total income

according to the rates applicable under the operation of the Indian Finance Act, 1942, increased in respect of each such rate by one-twentieth thereof, the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of five annas in the rupee.

(5) In cases to which Section 17 of the Income-tax Act applies, the tax chargeable shall be determined as provided in that section, but with reference to the rates imposed by sub-section (1), and in accordance, where applicable, with the provisions of sub-sections (3) and (4) of this section.

(6) For the purposes of making any deduction of income-tax in the year beginning on the first day of April, 1951 under sub-sections (2) or sub-section (2B) of Section 18 of the Income-tax Act from any earned income chargeable under the head "Salaries", the estimated total income of the assessee under this head shall, in computing the income-tax to be deducted, be reduced by an amount equal to one-fifth of such earned income but not exceeding in any case four thousand rupees; but no abatement shall be allowed by the person responsible for paying the salary in respect of any donations made by the assessee to which Section 15B of the Income-tax Act is or may be applicable.

(7) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Income-tax Act, and the expression "earned income" has the meaning assigned to it in clause (6AA) of section 2 of that Act.

Amendment of section 17, Act XI of 1922.

With effect from the first day of April, 1951, the following sub-section shall be substituted for sub-section (1) of Section 17 of the Income-tax Act, namely:—

“(1) Where a person is not resident in the taxable territories and is not a company, the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount equal to—

Finance Act, 1951

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(a) the income-tax which would be payable on his total income at the maximum rate, plus

(b) either the super-tax which would be payable on his total income at the rate applicable in the case of an individual to the slab next to the slab exempt from super-tax, or the super-tax which would be payable on his total income if it were the total income of a person resident in the taxable territories, whichever is greater :

Provided that any such person may, on the first occasion on which he is assessable for any year subsequent to the year ending on the 31st day of March, 1951, and before the 30th day of June in that year, or where the first occasion on which he is so assessable falls during the year ending on the 31st day of March, 1952, before such date as the Central Board of Revenue may by notification in the Official Gazette, specify in this behalf, by notice in writing to the Income-tax Officer declare (such declaration being final and being applicable to all assessments thereafter) that the tax, including super-tax payable by him or on his behalf on his total income shall be determined with reference to his total world income, and there upon such tax shall be an amount bearing to the total amount of tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income.

THE FIRST SCHEDULE.

Part I.

Rates of income-tax.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B or paragraph C of this part applies—

	Rate	Surcharge
1. On the first Rs. 1,500 of total income	Nil	Nil
2. On the next Rs. 3,500 of total income	Nine pies in the rupee	One-twentieth of the rates specified in the preceding column

3. On the next Rs. 5,000 of total income	One anna and nine pies in the rupee	Do
4. On the next Rs. 5,000 of total income	Three annas in the rupee	Do
5. On the balance of total income	Four annas in the rupee	Do

Provided that—

(i) no income-tax shall be payable on a total income which before deduction of the allowance, if any, for earned income, does not exceed the limit specified below;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance if any, for earned income) exceeds the said limit;

(iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds the said limit the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates herein specified,—

whichever is less.

The limit referred to in the above proviso shall be—

(1) Rs. 7,200 in the case of every Hindu undivided family which satisfies as at the end of the previous year either of the following conditions, namely:—

(a) that it has at least two members entitled to claim partition who are not less than 18 years of age; or

(b) that it has at least two members entitled to claim partition neither of whom is a lineal descendant of the other and both of whom are not lineally descended from any other living member of the family; and

(ii) Rs. 3,600 in every other case.

Explanation—For the purposes of this paragraph, in the case of every Hindu undivided family governed by the Mitakshara law, a son shall be deemed to be entitled to claim partition of the coparcenary property against his father or grandfather, notwithstanding any custom to the contrary :

Provided further that—

(1) no surcharge shall be payable on a total income which before the deduction of the allowance, if any, for earned income does not exceed the limit specified below;

(ii) the surcharge payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds the said limit.

The limit referred to in the above proviso shall be—

(i) Rs. 14,400 in the case of every Hindu undivided family referred to in preceding proviso;

(ii) Rs. 7,200 in every other case.

B. In the case of every company—

	Rate.	Surcharge.
On whole of the total income.	Four annas in the rupee.	One-twentieth of the rate specified in the preceding column.

Provided that in the case of a company which, in respect of its profits liable to tax under the Income-tax Act for the year ending on the 31st day of March, 1952, has made the prescribed arrangements for the declaration and payment within the territory of Indian excluding the State of Jammu and Kashmir, of the dividends payable out of such profits, and has deducted super-tax from the dividends in accordance with the provisions of sub-section (3D) or (3E) for Section 18 of that Act—

(i) where the total income, as reduced by seven annas in the rupee and by the amount, if any, exempt from income-tax, exceeds the amount of any dividend (including dividends payable at a fixed rate) declared in respect of the whole or part of the previous year

for the assessment for the year ending on the 31st day of March 1952 and no order has been made under sub-section (1) of Section 23A of the Income-tax Act, a rebate shall be allowed, at the rate of one anna per rupee on the amount of such excess;

(ii) where the amount of dividends referred to in clause (i) above exceeds the total income as reduced by seven annas in the rupee and by the amount, if any, exempt from income-tax, there shall be charged on the total income an additional income-tax equal to the sum, if any, by which the aggregate amount of income tax actually borne by such excess (hereinafter referred to as "the excess dividend") falls short of the amount calculated at the rate of five annas per rupee on the excess dividend.

For the purposes of the above proviso, the expression "dividend" shall have the meaning assigned to it in clause (CA) of Section 2 of the Income-tax Act, but any distribution included in that expression, made during the year ending on the 31st day of March, 1952, shall be deemed to be dividend declared in respect of the whole or part of the previous year.

For the purpose of clause (ii) of the above proviso, the aggregate amount of income-tax actually borne by the excess dividend shall be determined as follows—

(i) the excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous year as would be just sufficient to cover the amount of the excess dividend and as have not likewise been taken into account to cover an excess dividend of a preceding year;

(ii) such portion of the excess dividend as is deemed to be out of the undistributed profits of each of the said years shall be deemed to have borne tax,—

(a) if an order has been made under subsection (1) of Section 23A of the Income-tax Act, in respect of the undistributed profits of that year, at the rate of five annas in the rupee, and

(b) in respect of any other year, at the rate applicable to the total income of the company, for that year reduced by the rate at

which rebate, if any, was allowed on the undistributed profits.

C. In the case of every local authority and in every case in which under the provisions of the Income-tax Act, income-tax is to be charged at the maximum rate—

	Rate	Surcharge
On the whole of total income.	Four annas in the rupee.	One-twentieth of the rate specified in the preceding column.

PART II.

Rates of super-tax.

A In the case of every individual, Hindu undivided family, unregistered firm, and other association of persons, not being a case to which any other paragraph of this part applies—

	Rate.	Surcharge.
1. On the first Rs. 25,000 of total income	Nil	Nil
2. On the next Rs. 15,000 of total income	3 annas in the rupee	One-twentieth of the rate specified in the preceding column.
3. On the next Rs. 15,000 of total income	4 annas in the rupee	Do
4. On the next Rs. 15,000 of the total income	6 annas in the rupee	Do
5. On the next Rs. 15,000 of total income	7 annas in the rupee	Do
6. On the next Rs. 15,000 of total income	7½ annas in the rupee	Do
7. On the next Rs. 50,000 of total income	8 annas in the rupee	Do
On the balance of total income	8½ annas in the rupee	Do

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B. In the case of every local authority—

On the whole of total income. Rate $2\frac{1}{2}$ annas in the rupee. Surcharge 3 pies in the rupee.

C. In the case of an association of persons being a co-operative society (other than the Sanikatta Saltowners Society in the State of Bombay) for the time being registered under the Co-operative Societies Act, 1912, or under any law of a State governing the registration of co-operative societies—

	Rate	Surcharge
1. On the first Rs. 25,000 of total income	Nil	Nil
2. On the balance of total income	$2\frac{1}{2}$ annas in the rupee	Three pies in the rupee

D. In the case of every company:—

Rate.

On the whole of total income. Four annas and nine pies in the rupee.

Provided that—

(i) a rebate at the rate of three annas per rupee of the total income shall be allowed in the case of every company which—

(a) in respect of its profits liable to tax under the Income-tax Act for the year ending on the 31st day of March, 1952, has made the prescribed arrangements for the declaration and payment in the territory of India excluding the State of Jammu and Kashmir of the dividend payable out of such profits and for the deduction of super-tax from dividends in accordance with the provisions of sub-section (3D) or (3E) of Section 18 of that Act, and

(b) is a public company with total income not exceeding Rs. 25,000;

(ii) a rebate at the rate of two annas per rupee of the total income shall be allowed in the case of any company which satisfies condition (a), but not condition (b), of the preceding clause; and

(iii) a rebate at the rate of one anna per rupee of the total income shall be allowed in the case of any company which, not being entitled to a rebate under either of the preceding clauses, is—

(a) a public company whose shares were offered for sale in a recognised stock exchange at any time during the previous year, or

(b) a company all of whose shares were held at the end of the previous year by one or more such public companies as aforesaid :

Provided further that the super-tax payable by a company the total income of which exceeds Rs 25,000 shall not exceed the aggregate of—

(a) the super-tax which would have been payable by the company if its total income had been Rs. 25,000, and

(b) half the amount by which its total income exceeds Rs. 25,000.

Explanation—For the purposes of this paragraph of this Part a company shall be deemed to be a public company only if it is neither a private company within the meaning of the Indian Companies Act, 1913, nor a company in which shares carrying more than fifty per cent. of the total voting power were, at any time during the previous year, held or controlled by less than six persons.

The Finance Act, 1950.

RATES OF INCOME-TAX.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B or C of this part applies—

	Rate.
1. On the first Rs. 1,500 of total income	Nil
2. On the next Rs. 3,500 of total income	Nine pies in the rupee.
3. On the next Rs. 5,000 of total income	One anna and nine pies in the rupee.
4. On the next Rs. 5,000 of total income	Three annas in the rupee.
5. On the balance of total income	Four annas in the rupee.

Provided that—

(i) No income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed the limit specified below.

(ii) The income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds the said limit.

(iii) The income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) A sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds the said limit the same proportion as such reduced total income bears to the unreduced total income, or

(b) The income-tax payable on the income so reduced at the rates herein specified,—

whichever is less.

The limit referred to in the above proviso shall be—

(i) Rs. 7,200 in the case of every Hindu undivided family which satisfies as at the end of the previous year either of the following conditions, namely:—

(a) That it has at least two members entitled to a share or partition who are not less than 18 years of age; or

(b) That it has at least two members entitled to a share or partition neither of whom is a lineal descendant of the other and both of whom are not lineally descended from any other living member of the family; and

(ii) Rs. 3,600 in every other case.

B. In the case of every company—	Rate.
On the whole of total income	Four annas in the rupee.

Provided that in the case of a company which, in respect of its profits liable to tax under the Income-tax Act for the year ending on the 31st day of March, 1951, has made the prescribed arrangements for the declaration and payment within the territory or India excluding the State of Jammu and Kashmir, of the dividends payable out of such profits, and has deducted super-tax from the dividends in accordance with the provisions of sub-section (3D) or (3E) of Section 18 of that Act—

(i) Where the total income, as reduced by six and a half annas in the rupee and by the amount, if any, exempt from income-tax, exceeds the amount of any dividends (including dividends payable at a fixed rate) declared in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1951, and no order has been made under sub-section (1) of Section 23A of the Income-tax Act, a rebate shall be allowed at the rate of one anna per rupee on the amount of such excess.

(ii) Where the amount of dividends referred to in clause (i) above exceeds the total income as reduced by six and a half annas in the rupee and by the amount, if any, exempt from Income-tax, there shall be charged on the total income an additional income-tax equal to the sum, if any, by which the aggregate amount of income-tax actually borne by such excess (hereinafter referred to as "the excess dividend") falls short of the amount calculated at the rate of five annas per rupee on the excess dividend.

For the purpose of the above proviso, the expression "dividend" shall have the meaning assigned to it in clause (6A) of Section 2 of the Income-tax Act, but any distribution included in that expression, made during the year ending on the 31st day of March, 1951, shall be deemed to be a dividend declared in respect of the whole or part of the previous year.

For the purposes of clause (ii) of the above proviso, the aggregate amount of income-tax actually borne by the excess dividend shall be determined as follows:—

(i) The excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous year as would be just sufficient to cover the amount of the excess dividend and as have not likewise been taken into account to cover an excess dividend of a preceding year.

(ii) Such portion of the excess dividend as is deemed to be out of the undistributed profits of each of the said years shall be deemed to have borne tax—

(a) If an order has been made under sub-section (1) of Section 23A of the Income-tax Act, in respect of the undistributed profits of that year, at the rate of five annas in the rupee, and

(b) In respect of any other year, at the rate applicable to the total income of the company, for that year reduced by the rate at which rebate, if any, was allowed on the undistributed profits.

C. In the case of every local authority and in every case in which, under the provisions of the Income-tax Act, Income-tax is to be charged at the maximum rate—

Rate.

On the whole of total income Four annas in the rupee.

Rates of Super-tax.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which any other paragraph of this part applies—

Rate.

1. On the first Rs. 25,000 of total income Nil
2. On the next Rs. 15,000 of total income Three annas in the rupee
3. On the next Rs. 15,000 of total income Four annas in the rupee
4. On the next Rs. 15,000 of total income Six annas in the rupee
5. On the next Rs. 15,000 of total income Seven annas in the rupee
6. On the next Rs. 15,000 of total income Seven and a half annas in the rupee
7. On the next Rs. 50,000 of total income Eight annas in the rupee
8. On the balance of total income Eight and a half annas in the rupee

B. In the case of every local authority— Rate.

On the whole of total income Two and a half annas in the rupee

C. In the case of an association of persons being a Co-operative Society (other than the Sanikatta Salt owners' Society in the State of Bombay) for the time being registered under the Co-operative Societies Act, 1912, or under any law of a State governing the registration of Co-operative societies—

Rate.

- | | |
|--|---------------------------------------|
| 1. On the first Rs. 25,000 of total income | Nil |
| 2. On the balance of total income | Two and a half annas
in the rupee. |

D. In the case of every company—

Rate.

- | | |
|------------------------------|--|
| On the whole of total income | Four and a half annas in
the rupee. |
|------------------------------|--|

Provided that—

(i) a rebate at the rate of three annas per rupee of the total income shall be allowed in the case of any company which—

(a) in respect of its profits liable to tax under the Income-tax Act for the year ending on the 31st day of March, 1951, has made the prescribed arrangements for the declaration and payment in the territory of India excluding the State of Jammu and Kashmir of the dividend payable out of such profits and for the deduction of super-tax from dividends in accordance with the provisions of Sub-section (3D) or (3E) of Section 18 of that Act, and—

(b) Is a public company with total income not exceeding Rs. 25,000.

(ii) A rebate at the rate of two annas per rupee of the total income shall be allowed in the case of any company which satisfies condition (a), but not condition (b), of the preceding clause; and—

(iii) A rebate at the rate of one anna per rupee of the total income shall be allowed in the case of any company which, not being entitled to a rebate under either of the preceding clauses, is—

(a) A public company whose shares were offered for sale in a recognised stock exchange at any time during the previous year.

(b) A company all of whose shares were held at the end of the previous year by one or more such public companies as aforesaid :

Provided further that the super-tax payable by a company the total income of which exceeds Rs 25,000 shall not exceed the aggregate of—

(a) The super-tax which would have been payable by the company if its total income had been Rs 25 000, and—

(b) Half the amount by which its total income exceeds Rs. 25,000.

Explanation:—For the purposes of this paragraph of this part, a company shall be deemed to be a public company only if it is neither a private company within the meaning of the Indian Companies Act, 1913, nor a company in which shares carrying more than 50 per cent. of the total voting power were, at any time during the previous year, held or controlled by less than six persons.

APPENDIX II

Rules for the computation of the profits and gains of Insurance Business

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profit and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

2. The profits and gains of life insurance business shall be taken to be either—

(a) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(b) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business,
whichever is the greater :

Provide that the amount to be allowed as management expenses shall not exceed—

(a) $7\frac{1}{2}$ per cent. of the premiums received during the preceding year in respect of single premium life insurance policies, *plus*

(b) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums payable is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year $7\frac{1}{2}$ per cent. of such first year's premiums received during the preceding year, *plus*

(c) 90 per cent. of the first year's premiums received during the preceding year in respect of all other life insurance policies, *plus*

(d) 12 per cent of all renewal premiums received during the preceding year.

3. In computing the surplus for the purpose of rule 2,—

(a) one-half of the amounts paid to or reserved for or expended on behalf of policy-holders shall be allowed as a deduction :

Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amounts to the extent to which they are paid out of or in respect of any surplus brought forward from a previous inter-valuation period :

Provided further that if any amount so reserved for policy-holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders one-half of such amount, if it has been previously allowed as a deduction, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved ;

(b) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of securities or other assets shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus :

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Superintendent of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policy holders and for

contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included in the surplus in respect of appreciation of, such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just ;

(c) interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall not be excluded but the whole amount of such interest received during the inter-valuation period shall be exempt from income-tax under the second proviso to section 8 though not from super-tax ;

4. Where for any year an assessment is made in accordance with annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (5) of section 18 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

5. For the purposes of these rules—

(i) 'Preceding year' means that year for which annual accounts are required to be prepared under the Insurance Act, 1938, immediately preceding the year for which the assessment is to be made or until the commencement of the Insurance Act, 1938, the previous year as defined in section 2 of this Act;

(ii) 'gross external incomings, means the full amount of incomings from interest, dividends, fines and fees and all other incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policy-holders and interest and dividends on any annuity fund) and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of securities or other assets :

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9 shall be computed upon the basis laid down in the last-named section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section.

(iii) 'Management expenses' means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance in addition thereto a fair proportion of the expense incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on the realisation of, securities or other assets and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these rules :

(iv) 'life insurance business' means life insurance business as defined in clause (11) of section 2 of the Insurance Act, 1938 :

(v) 'securities' includes stocks and shares.

6. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Superintendent of Insurance after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance.

7. The profits and gains of companies carrying on dividing societies or assessment business shall be taken to be 15 per cent. of the premium income of the previous year. Or in the case of non-resident companies 15 per cent. of the Indian premium income of the previous year.

8. The profits and gains of the Indian branches of an insurance company not resident in the taxable territories in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its premium income of the taxable territories bears to its total premium income. For the purpose of this rule, the total world income of life insurance companies not resident in the taxable territories whose profits are periodically ascertained by actuarial

valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in the taxable territories.

9. These rules apply to the assessment of the profits of any business of insurance carried on by a mutual insurance association.

— — —

APPENDIX III

Solved Questions

1. The following are the particulars about the income of Shri D. D. Pande, a Government servant, for the previous year ended 31st March, 1951 :—

(a) His salary was Rs. 750 per month and his travelling allowance bills for the whole year amounted to Rs.1,660, the actual expenditure incurred by him. on travelling, being Rs.1,140.

(b) He contributed one anna in the rupee to Government Provident Fund, his employer contributing an equal amount. Interest on his Provident Fund Account balance for the year amounted to Rs.1,580.

(c) He owns two bungalows in the Civil Lines. One of these is let at Rs.125 per month and the other, the annual rental value of which is Rs.850, is occupied by him for his own residence. He pays Rs. 150 per year as ground rent and insurance charges in respect of the first bungalow and Rs 210 per year in respect of the second one.

(d) His investments during the year were as follows :—

(i) Rs.5,000 in 5% free of tax Government Securities.

(ii) Rs.8,000 in 6% Preference Shares of a Sugar Mill Company.

Solved Questions

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(e) He is insured and pays an annual premium of Rs.1,250.
You are required to find out for his assessment of 1951-52 :—

- (i) His Total Income;
- (ii) Earned Income Allowance that can be granted to him;
- (iii) His Taxable Income; and
- (iv) The amount on which he can claim exemption.

Solution :

Statement of Total Income ;	Amount Rs.
1. Income from salary :	9,000
2. Income from securities :	
Rs. 5000, 5% (free of tax) Government Securities	250
3. Income from property :	
Annual Value of two houses	
Let	1500
Occupied	850
	2,350
Less :	
One-sixth for repairs	392
Ground rent and insurance charges in respect of first bungalow,	150
and in respect of second one	210
	752
	1,598
4. Income from other sources :	
Dividend on pref. shares	480
(i) Total Income	11,328
(ii) Earned Income Allowance	1,800
(iii) Taxable Income	9,528

(iv) Exempted Income:	
(a) Govt. Securities free of tax	250 0
(b) Provident Fund	562 8
(c) Insurance premium	1,250 0
Total	<u>2,062 8</u>

2. From the following particulars relating to the year ended 31st March, 1951 furnished by A, a general merchant, ascertain his total income and the amount of income, entitled, to income-tax relief:—

He owns properties in four places, and their annual values are Rs. 57,380, Rs. 9,840, Rs. 2,060, and Rs. 2,000 respectively. He is interested in A.B. & Co. (registered) for a share of 8 annas and in C. D. & Co. (unregistered) for a share of 6 annas. His income and Expenditure Account for the year in question is as under:—

Rs.	Rs.
Property expenses—	Property rents ... 78,000 0
Repairs ... 20,000	Share of profits—
Collection charges ... 4,660	A. B. & Co. ... 20,854
Ground rent ... 2,824	C. D. & Co. ... 9,124
Insurance premium 1,568	Remuneration as
Salaries and wages ... 27,000	liquidator ... 1,40,000
General expenses ... 3,000	Profits of his business ... 96,000
Reserve for bad debts ... 17,800	Interest on loans ... 1,80,000
Interest to mortgagees of property ... 18,000	Interest on tax-free Government securities ... 1,20,000
Other interest ... 72,000	
Balance being net profit 4,77,126	
<u>6,43,978</u>	<u>6,43,978</u>

Solved Questions

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Rs. 500, being collection charges on properties, has been debited to salaries and wages account by mistake.

He also has a property which is used solely as his residence and the municipal valuation of which is Rs. 10,000. Insurance premium and ground rent for the same amounted to Rs. 2,976 which is not included in any figure stated above.

Solution :

Statement of total income of Mr. A—

Amount
Rs

- | | |
|------------------------------------|----------|
| 1. Income from tax-free securities | 1,20,000 |
| 2. Income from property : | |

(a) Property let :

	Rs.	Rs.
Annual rental value		78,000
Less:		
1/6th for repairs	13,000	
Ground rent	2,824	
Insurance	1,568	
Collection charges	4,680	
Mortgage interest	18,000	
	40,072	
		37,928

(b) Property occupied :

Annual rental value		
(1/10th of total income)		54,483 *
Less:		
1/6th for repairs	9,080	
Insurance premium and ground rent	2,976	
	12,056	
		42,427

Total income from property	80,355
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Income-Tax Law and Accounts

3. Income from business:

(a) Profit from registered firm	20,854
(b) Profit from unregistered firm	9,124
(c) Proprietary business (loss)	

	Rs.		
Profit	96,000		
Less :			
Salaries etc.	26,500		
General Exps.	3,000		
Interest	72,000		
	<u>1,01,500</u>	<u>-5,500</u>	24,478

4. Income from other sources :

(a) Remuneration as Liquidator	1,40,000	
(b) Interest on Loans	1,80,000	3,20,000
	<u>Rs. 5,44,833</u>	

Exempted Income:

Interest from tax-free securities	1,20,000
Profit from unregistered firm	9,124
	<u>1,29,124</u>

Annual value of property occupied—

* 1/10 of 12/11 of rest of the income
 :- 1/10 of 12/11 of (1,20,000 + 37,928 + 24,478 + 3,20,000
 - 2,976)
 = Rs. 54,483.

Note : 1. Collection charges :

Actual Rs. 4,660 + Rs. 500 included in salaries = Rs. 5,160

Allowed—Rs. 4,680 at 6 per cent. on Rs. 78,000

2. Salaries and wages Rs. 27,000 less Rs. 500 collection charges included therein = Rs. 26,500.

3. Actual rent received is Rs. 78,000, against total annual value of Rs. 71,280

4. There is no mention of property tax levied by any local authority. It is, therefore, presumed that no tax was paid by the assessee out of the rent received by him.

3. Mr. M. P. Mathur, honorary professor in a Kanpur college, has prepared the following Income and Expenditure Account for the year ending 31st March, 1951. Prepare a statement showing his assessable income for income-tax purposes:—

Income and Expenditure Account

Expenditure:	Rs.	Income	Rs.
To Rent	1,200	By Honorarium	2,400
„ Books and Magazines	500	Prize in "Commonsense	
„ Car Expenses	500	„ "Cross-word"	17,000
„ Charity	100	„ Sale proceeds of	
„ Incom-tax	400	ancestral property	4,000
„ Gift to a relative	50	„ Gift from maternal	
„ Loss on race course	6,000	uncle	500
„ Household expenses	10,000	„ Royalty on books	2,000
„ Net income	7,150		
	<u>25,900</u>		<u>25,900</u>

Solution :—

Taxable income of Shri M. P. Mathur :—

	Rs.
(i) Honorarium	2,400
(ii) Royalty on books	2,000
Total income	<u>4,400</u>

Income-Tax Law and Accounts

Rs. 2,400, Honorarium income will be taxable at 1950-51 rates, (because new rates of tax are applicable to salaries not the same year but the next year), and Rs. 2,000, royalty income will be taxable at 1951-52 rates.

Tax will be calculated as follows:

(i) Tax on Rs. 4,400, at (1950-51) rates = Rs. 135-15 as Rs. as

Tax on Rs. 2,400 (proportionately) = 74-2

(ii) Tax on Rs. 4,400 at 1951-52 rates = Rs. 135-15 as

Plus 5 per cent. surcharge = 6-18 as
Rs. 142-12 as

Tax on Rs. 2,000 (proportionately) = 64-14

Total = Rs. 319-0

Against the income of Rs. 4,400, an earned income relief of Rs. 880, will be granted and tax will be charged on Rs. 3,520 which will be calculated on the basis of proportionate amount of tax on Rs. 4,400. It will be calculated as follows:

Tax on Rs. 4,400 = Rs. 139

Tax on Rs. 3,520 = Rs. 111-3 as

(proportionately)

4. The total income of Mr. J. Roy during the year ending 31st December, 1950, was Rs. 60,000. Find out the total amount of income-tax payable in respect of his assessment of 1951-52, if his income was derived from the following sources:

Rs. 10,000 from salaries,
Rs. 20,000 from securities, and
Rs. 30,000 (taxable) from property.

Solution:	Rs.	Rs.
1. Income from salaries	10,000	
Less earned income relief	2,000	8,000
	<hr/>	
2. Income from securities		
(presumed to be gross amount)		20,000
3. Income from property (taxable)		30,000
		<hr/>
Total taxable income		58,000
		<hr/>

For the assessment of 1951-52, as per the provisions of the Finance Act of 1951 [clause (3) (a)], income-tax on Rs. 28,000 (income from salaries and securities) will be charged according to the rates of 1950 Finance Act, and on Rs. 30,000 (income from property) according to rates of 1951 Finance Act.

The amount of income-tax payable by Mr. Roy will be calculated as follows —

Income-tax on Rs. 58,000 at 1950 rates	Rs. 12,398-7	as	Rs. as.
Proportionate amount of tax on Rs. 28,000			5,985 7
Income-tax on Rs. 58,000 at 1951 rates	Rs. 13,018-6	as	
Proportionate amount of tax on Rs. 30,000			6,733 10
			<hr/>
^a Total income-tax payable	Rs.		12,719
			<hr/>

5. Mr H. murthy has the following income for the year ending 31st. March 1951 :—

(a) Salary Rs. 500 per month. He has contributed $6\frac{1}{4}\%$ of his salary to a recognized provident fund, to which an equal amount has been contributed by his employer. The interest at $4\frac{1}{2}\%$ per annum on his provident fund amounts to Rs. 300.

(b) He owns three houses, having municipal valuations of Rs. 1,800, Rs. 6,000 and Rs. 3,000 respectively. The following further details are available about these houses :—

(i) The first house has been let on a rent of Rs. 175 per month and he has incurred the following expenses in respect thereof: Interest on the mortgage of property, Rs. 1,200; Land Revenue, Rs. 40; Premium for fire insurance, Rs. 150; Interest on loan taken to repair the house, Rs. 600; Municipal taxes, Rs. 50. The house remained vacant for two months during the year.

(ii) The second house is used by him for his own residence and he has spent Rs. 300 on its repairs and has paid Rs. 100 as fire insurance premium.

(iii) The third house is also let on Rs. 200 per month and the construction of this house was completed in March, 1949.

Ascertain (a) the taxable income from property, (b) the total income, and (c) the exempted income for the assessment year 1951-52.

Solution :

TAXABLE INCOME FROM PROPERTY—

The first house (let).

		Rs.
Rent for 12 months at Rs. 175 per month		2,100
Less half the amount of municipal tax [Sec. 9 (2) second proviso (a)]		25
Annual Value	Rs.	2,075
Less—1/6th for repairs	346	
Interest on mortgage	1,200	
Land revenue	40	
Premium for insurance	150	
Interest on loan taken to repair the house	600	
Vacancy allowance	346	2,682
Loss (Carried forward)		- 607

Loss (Brought forward)			Rs.
The second house (used for residence).			-607
Annual value (not exceeding 10 percent of total income)		Rs.	651
Less—1/6th for repairs	109		
Fire ins. premium	100	209	442

The third house			nil
------------------------	--	--	-----

It is presumed that the construction of this house began after 1st April, 1946. It was completed in March, 1949. Income in respect of buildings the erection of which began and completed between the first day of 1st April, 1946 and 31st day of March, 1952, is exempted from payment of tax for a period of two years from the date of completion.

(Loss) = 163/11

Annual value of the residential house is calculated as follows :-

Let gross annual value of the residential house be X, then the total income of the assessee will be—

$$\text{Rs. } 6,675 + \text{Rs. } 607 + X - X/6 = 100$$

$$\text{Or } 5X/6 + \text{Rs. } 5,968$$

$$\text{Hence } X = 1/10 \text{ of } (5X/6 + \text{Rs. } 5,968)$$

$$X = 651$$

TOTAL INCOME OF MR. H. MURTHY:

1. Income from salary—

	Rs.	Rs.
Salary for 12 months at Rs. 500 per month	6,000	
Employer's contribution to provident fund	375	
Interest on provident fund	300	6,675

2. Income from property (loss)	- 165
	<hr/> 6,510
Less earned income allowance	1,335
	<hr/> 5,175
Taxable income	<hr/>

EXEMPTED INCOME—

Rs.

1. Provident fund contribution	750
(both of employee and employer to the extent of 1/10th of the regular salary)	
2. Interest on provident fund	300
	<hr/> 1,050

6. From the following particulars find out the income-tax payable by A for the year 1951-52:—

- (a) Profits from an unregistered firm Rs. 750;
- (b) Postal Cash Certificate income Rs. 600;
- (c) 3 per cent. free of tax Government loan of the value of Rs. 20,000 ;
- (d) Shares in a Cotton Mill Co. to the value of Rs. 5,000, a dividend of 15 per cent. (free of tax) is declared.
- (e) Shares in a Cotton Mill Co. to the value of Rs. 5,000, a dividend of 10 per cent. (less tax) is declared.
- (f) His wife's life insurance premium amounts to Rs 800 yearly.

Solution :**Assessment of Mr. A. for the year 1951-52:**

1. Income from securities:	Amount Tax deducted at source	
	Rs.	Rs.
3 per cent. free of tax Government loan of Rs. 20,000	600	
2. Income from business		
Profits from unregistered firm	750	
3. Income from other sources:		
Dividend—gross amount	1,500	375
	<u>2,850</u>	<u>375</u>
Exempted income:		
(a) Interest from securities (tax free)	600	
(b) Profits from unregistered firm		
(presumed taxed in the hands of the firm)	750	
(c) Life insurance premium which can be Rs. 475 on the basis of one sixth of total income, but here the question does not arise because the total income is below the taxable limit.	475	
	<u>Rs. 1,825</u>	

Notes-1. The total income of Mr. A is below the taxable limit, and therefore he has no tax liability. The question of any exempted income also does not arise. He is entitled to a refund of Rs. 375, in respect of income-tax on dividend income.

2. Partners are not entitled to refund of income-tax on their shares of profit of unregistered firms.

3. Income from Postal Cash Certificates and National Saving Certificates is exempted from both income-tax and super-tax and is not taken into account in total income even for rate purposes.

4. Dividend income is calculated as follows ;—

10% (less tax) on Rs.5,000	Gross 500
------------------------------	---------------------

15% (free of tax) on 5,000 =Rs. 750 net

$\text{Rs. } 750 \times \frac{1}{1 - \frac{48}{100}} = \text{Rs. } 750 \times \frac{4}{3}$	1,000
--	-------

1,500

7. During the year ended 31st March 1951, A was manager of a firm drawing a salary of Rs. 600 and a house-rent allowance of Rs. 50 per month. He contributed Rs.800 to a recognized provident fund. The employer contributed the same amount. The interest on his provident fund account for the year was Rs. 915. He received two months' salary as bonus during the year. His other income consisted of —

- (a) Rs.900 as share of profit from an unregistered firm which has been taxed;
- (b) Rs.1,275 from property;
- (c) Rs.500 interest from tax-free government securities and
- (d) Rs.810 received as dividend.

The Premium paid on his life insurance policy was Rs.600 and that on his wife's insurance policy was Rs.265.

Prepare his assessment for the year 1951-52.

A assessment of Mr. A. for 1951-52:-

		Amount Tax deducted At Source	
	Rs.	Rs.	Rs.
1. Income from salary:			
Salary	7,200		
Bonus	1,200		
House-rent allowance	600		
Employer's contribution to Provident Fund	800		
Interest on provident Fund	915	10,715	554-12
	<u> </u>		
2. Income from securities:			
Interest from tax-free securities		500	
3. Income from property:			
Annual value	1,275		
Less one-sixth for repairs	212	1,063	
	<u> </u>		
4. Income from business:			
Share of profit in unregistered firm (taxed)		900	
5. Income from other sources:			
Dividend (gross)		1,080	270-0
		<u> </u>	<u> </u>
Total Income		14,258	824-12
		<u> </u>	<u> </u>

Less Earned Income Allowance (on Rs. 10,715 salary)	2,143
	<hr/>
Taxable income	12,115
	<hr/>

Exempted Income:

1. Interest on tax-free securities	500
2. Share of profit in unregistered firm	900
3. Provident Fund contribution of both—employer and employee, to the extent of one-sixth of regular salary	1,200
4. Life insurance premium	865
5. Interest on Provident Fund	915
Total	<hr/>

Note: It is presumed that the rate of interest on provident fund is below the prescribed rate of interest, viz. 6 per cent. per annum.

8. Below are set out particulars of X's income for the year ended 31st. March, 1951—

- (a) Salary of Rs.500 per month, from which a 10 per cent deduction is made for contribution to a recognized provident fund.
- (b) 5% interest on Rs.15,000 government securities.
- (c) $7\frac{1}{2}\%$ dividend on 100 preference shares of Rs.100 each.
- (d) A tax-free dividend of Rs.6-4as per share on 120 ordinary shares.
- (e) Rs.1,200 profit on dealings in cotton futures.
- (f) Interest Rs.34-13 annas on postal savings bank account and Rs.100 on a bank fixed deposit.

During the year he paid Rs.1,450 as premium on his life policy. He also suffered a loss of Rs.750 on forward business in sugar.

From the foregoing information you are required to prepare X's assessment for the year 1951-52.

Solution:

Assessment of Mr. X for 1951-52		Amount Tax deducted at source:	
		Rs.	Rs.
1. Income from salary:		6,000	154 11
2. Interest from securities:			
5 per cent. on Rs. 15,000			
Government securities		750	187
3. Income from business;	Rs.		
Profit in cotton futures	1,200		
less loss in sugar business	750	450	

4. Income from other sources:			
7½% dividend on 100 Preference			
Shares		750	187 8
Dividend on Ordinary Shares		1,000	250 0
Interest on Bank Deposits		160	
		-----	-----

Total Income	9,110	770 11
Less Earned Income Allowance (20% of Rs. 6,450)	1,290	
Taxable Income	<u>7,820</u>	

Exempted Income:—

Provident Fund	600
Insurance Premium (together with Provident Fund is allowable on the basis of 1/6th of the total income)	<u>918</u>
	<u>1,518</u>

He will be required to pay tax :—

at 1950-51 rates on Rs. 7,300 (Rs. 8500 salary, securities and dividends Less Rs. 1,200 E. I. R. on 6,000 Salary), and at 1951-52 rates on Rs. 520 (Rs. 610 Less Rs. 90 E. I. R. on Rs. 450, Business profits)

	Rs. as.	Rs. as.
Tax on Rs. 7,820 at 1950-51 rates	472 8	
Therefore proportionate tax on Rs. 7,300		441 1
Tax on Rs. 7,820 at 1951-52 rates	496 2	
(Tax Rs. 472-8 as. +5% Surcharge- Rs. 23-10-0)		
Therefore proportionate tax on Rs. 520		<u>33 0</u>
Total tax on Rs. 7,820=		<u>474 1</u>

Average rate of tax 11.64 pies per rupee.

Rate on Rs. 1,518 (Provident Fund and insurance

premium) at average rate of 11.64 pies 92 0

Tax due	...	Rs.	382 1
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Tax paid at source	...		779 11
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Tax refundable		Rs.	397 10
----------------	--	-----	--------

9. Mr. Hari Har Nath is an employee in the Capital Stores Limited, New Delhi. Following are the particulars about his income for the year ending on 31st March, 1951 :—

i) Salary Rs. 480 per month. He contributed $6\frac{1}{4}\%$ of his salary towards a recognised provident fund to which his employer contributed an equal amount. On the occasion of the Independence Day celebrations he received two months' salary as bonus. Rs. 375 was credited to his Provident Fund Account during the year in respect of interest on the accumulated balance.

(ii) He owns a house at Agra which is let at Rs. 60 per month. At the same rent he hired a house for his residence at New Delhi.

(iii) He received Rs. 375 as dividend on his investment in the ordinary shares of the Indian Iron and Steel Company Ltd.

(iv) He received Rs. 4,600 from Post Office in respect of Cash Certificates (Rs. 115 each) which he purchased 10 years back at Rs. 88-2 annas.

(v) He paid Rs. 370 as premium on his life policy. You are required—

(a) to prepare, in proper form, his assessment for the year 1951-52 showing his (i) total income, (ii) taxable income, and (iii) exempted income.

(b) to state how tax payable by him shall be calculated.

Solution:

(a) I. Income from salary—	amount.
	Rs.
Salary for 12 months at Rs. 430	
per month	5,760
Bonus—two month's salary	960
Employer's contribution to	
provident fund	360
Interest on provident fund	375
	<u>7,455</u>
II. Income from property—	
Rent of Agra house	Rs. 720
less one-sixth for repairs	Rs. 120 600
	<u> </u>
III. Income from other sources—	
Dividend on shares—grossed up	500
	<u> </u>
	8,555
Less earned income relief—	
one-fifth of income under the	
head 'salaries'	1,491
	<u> </u>
Taxable income	<u>7,064</u>

Exempted income—

(a) Contribution to provident fund, both of the employer and the employee, being less than $1/6$ th of salary	720
(b) Insurance premium (both insurance premium and provident fund being less than one-sixth of total income)	370
(c) Interest on provident fund being less than one-third of annual salary and it being presumed that the rate of interest is less than 6 per cent.	375
	<hr/> 1,465 <hr/>

Notes—

- (i) no consideration will be given to the house hired by him for his residence in New Delhi.
- (ii) interest on Post Office Cash Certificates is totally exempt.

(b) Calculation of tax payable—

(i) tax on salary	Rs. 7,455
less earned income relief	Rs. 1,491

Rs 5,964

and on dividend income of Rs. 500 will be charged at 1950-51 rates ;

- (ii) tax on property income of Rs. 600 will be charged at 1951-52 rates.

That is to say on Rs. 96,464 at 1950-51 rates, and
on Rs. 600 at 1951-52 rates.

The method of calculating tax has already been explained elsewhere. On the total income of Rs. 7,064 calculate the average rate of tax and at the average rate of tax so worked out calculate exempted allowance on Rs 1,465.

10. An American came out to Delhi for the first time on 1st November 1950 to take up the post of chief chemist in a large Chemical Works under a five years' agreement and on a monthly salary of Rs. 2,000. His other income in taxable territories up to 31st March, 1951, was as follows :—

(a) One half-year's interest at 3% on Bombay Govt. Loan of Rs. 25,000.

(b) 6% dividend, less tax on, Rs. 10,000 Preference shares in an electricity supply company, whose entire profits are taxable.

(c) A dividend of Rs. 3 and a bonus of Rs. 2 per share (both without deduction of tax) on 1,000 shares in a jute mill company, 80% of whose profits are taxable.

(d) Rs. 250 as director's fees.

Prepare a statement showing his income-tax liability for the financial year 1951-52, and state whether he would be regarded a resident or a non-resident for this purpose.

Solution :—

Assessment for the year 1951-52.	Amount.	Tax deducted at source.
	Rs.	Rs. as.
1. Income from salary	8,000	371 3
2. Income from Securities— $\frac{1}{2}$ year's interest on 3% second defence loan of Rs. 25,000	375	93 2
3. Income from other sources		
Dividends		
Electrical Supply Co. (gross)	600	150 0
Jute Mill shares (gross)	6,250	1,250 0
Director's fees.	250	
Total Income.	15,475	1,864 15
Less earned Income Relief on (Salary, 8,000 + Director's fees, Rs. 250.) Rs. 8,250.	1,650	
Taxable Income	13,825	

* Upto 31st March 1951, salary was due and received by the assessee for four months only—1st December, 1st January, 1st February and 1st March. Salary for the month of March, 1951, was due and received by him on 1st April 1951.

**Tax payable on Rs. 13,575 at 1950-51 rates
and on Rs. 250 at 1951-52 rates.**

	Rs.	as.
Tax on 13,825 at 1950-51 rates is—	1,428	2
On Ist 1,500	Nil	
On next 3,500 @ 9 pies	164	1
On „ 5,000 @ 1/9 pies	546	1 4
On balance 3,825 @ 3/-	717	3
Therefore, proportionate tax on Rs. 13,575—	Rs. 1,402	5
Again Tax on 13,825 at 1951-52 rates	1428	2
plus Surcharge @ 5%	71	7
Total	1,499	0
Therefore proportionate tax on Rs. 250 will be—Rs.	27	2
Total tax, therefore, on an income of		
Rs. 13,825	Rs. 1,429	7
Tax deducted at source	1,864	15
Tax refundable	Rs. 435	8

According to the provisions of Section 4 A clause (a) (iv) the assessee will be treated as resident but not ordinarily resident.

11. A doctor's income consists of Rs. 5,400 from profession, 5 per cent. interest on Rs. 10,000, Government Securities and Rs. 100 director's fees. He owns a bungalow which he uses for his residence. The Municipal valuation of this is Rs. 1,000. He paid Rs. 150, for fire insurance premium and Rs. 50 ground rent. The bungalow is mortgaged and the interest amounts to Rs. 800. He paid Rs. 1,200 life insurance premium on his own life.

Ascertain the tax payable by him for 1951-52.

Solution:	Amount	tax deducted at source.
	Rs.	Rs.

Statement of Total Income of the Doctor:**1. Income from Securities:**

5 per cent. Government securities of Rs. 10,000	500	125
--	-----	-----

2 Income from property:

Annual value	Rs. 545	
Less allowable Expenses:		
Repairs	91	
Fire Ins. premium	150	
Ground Rent	50	
Mortgage interest	800	
	<u>1091</u>	- 546 (loss)

Income from profession. 5,400

4. Income from other sources:

Director's fees	100	
	<u>100</u>	
Total	5,454	125

Less Earned Income Relief on Rs. 5,500

(Profession Rs. 5,400 + Rs. 100

Director's fees) 1,100

Taxable Income 4,354

Exempted Income:

Life insurance premium (not
exceeding one-sixth of
total income) Rs. 909

Calculation of tax:

Tax will be charged on Rs. 500 (Income from securities) at 1950-51 rates and on Rs. 3,854 at 1951-52 rates.

Solved Questions

Tax on total income of Rs. 4,354 at 1950-51 rates = Rs. 132-12

(i) Therefore proportionate tax on Rs. 500 = Rs. 15-4 annas,

Tax on total income of Rs. 4,354,	
at 1951-52 rates	Rs. 132-12-6
Plus sur-charge	<u>6-10-3</u> Rs. 139-6-9

(ii) Therefore proportionate tax on Rs. 3,854,
(income from profession, property
and other sources) Rs. 123-3 annas

Total tax on Rs. 4,354— (i) & (ii) Rs. 138-7 annas
Average rate—6.1 pies per rupee.

Less tax on exempted income of
Rs. 909 at average rate Rs. 28-14 annas.

Tax due	Rs. 109-9 as.
Tax deducted at source	Rs. 125-0 as.
Tax refundable	<u>Rs. 15-7 as.</u>

Note—Annual value of house property in occupation of the assessee is calculated according to the formula—

1/10 of 12/11 of the total income minus expenses (except 1/6th statutory allowance for repairs) in connection with the property.

It will be calculated as follows:—

1/10 of 12/11 of Rs. [(500 + 5400 + 100) - (150 + 50 + 800)].
= Rs 545

12. From the following particulars about the income of Shri R. P. Taraporewala, an officer in the service of the Government of India, for the year ended on 31st March, 1951, compute his total income for the assessment of 1951-52 :—

- (a) **Salary for service** in the Madhya Bharat State for 6 months at Rs. 4,000 per month ;
- (b) **Salary for service** in Jammu and Kashmir State for 3 months at Rs. 4,000 per month.
- (c) **Salary for service** in the Republic of China at Rs. 5,000 per month, out of which Rs. 1,000 per month was remitted to his wife resident in Bombay.
- | | |
|--|-------------------|
| (d) Dividend from a foreign company | Rs. 16,000 |
| Less tax deducted at source | 6,000 |
| | — — — |
| Net amount | Rs. 10,000 |

Solution :

Salary—	Rs.
Service in Madhya Bharat State	24,000
Service in Jammu and Kashmir	12,000
Service in Republic of China	15,000
	— — —
Dividend—unremitted foreign income—	51,000
	Rs. 16,000
Less statutory allowance	4,500 11,500
	— — —
Total income	Rs. 62,500
	— — —

- Note 1. It is presumed that Shri Taraporewala is a resident in the taxable territories. If he is a non-resident his total income will be Rs. 51,000.
2. An employee of the Government of India is liable to tax on salary wherever he may be serving.
3. He will be eligible for double-taxation relief in respect of dividend income on which Rs. 6,000 tax has been charged by the foreign Government.

13. From the following information in respect of the assessment of Shri Sohan Lal, calculate—

- (i) the total income ;
- (ii) earned income allowance ; and
- (iii) exempted income.

(1) Salary Rs. 1,500 per month from which 10 per cent. was deducted as his contribution towards a recognized provident fund. The employer contributed an equal amount.

(2) Interest credited (at the rate of $7\frac{1}{2}\%$ per annum) to provident fund account Rs. 1,000.

(3) Dividend received Rs. 4,800

(4) Life insurance premium paid Rs. 1,500.

Solution.

	Rs.
I Salary	18,000
Employer's contribution to provident fund	1,800
Interest on provident fund	1,000
	<hr/> 20,800
II Dividend—gross	6,400
	<hr/> Total Income
	27,200
	<hr/>
Earned Income allowance (Maximum allowable)	4,000
	<hr/>
Exempted income:—	
Contribution to provident fund	3,000
Insurance premium	1,066
Int. on provident fund	800
	<hr/> 4,866

Notes:— (a) Provident fund contributions (both of the employer and the employee) are allowed restricted to $1/6$ th of regular salary.

(b) Insurance premium is allowed provided the provident fund contributions allowed and the insurance premium put together, do not exceed $1/6$ th of total income of the assessee. The total income for this purpose should not include employer's contribution to provident fund and provident fund interest.

(c) Provident fund interest allowed is restricted to—

- (i) One-third of annual salary;
- (ii) 6 per cent. rate of interest.

14. A, an ordinary resident, makes a return of his income for the year ending 31st March, 1951, as follows:—

	Rs.	Rs.
Salary		24,000
Dividend from a tea company, assessed on 40 per cent. of its profits in December, 1950 (certificate under Section 20 produced)		6,000
Loss from speculation business discontinued in January, 1950, determined in his assessment for 1950-51, as under :—		
Speculation loss	40,000	
Less salary and property incomes of the year ending 31st March, 1950—set off	36,000	- 4,000

Insurance premiums (receipts produced) Rs. 3,000

On enquiry, the assessee supplied the following information:—

(a) Monthly salary Rs. 3000. The assessee was on leave for four months ex-India and out of 4 months' leave salary at the rate of Rs. 3,000 per month, two months' leave salary was drawn ex-India, the balance being drawn in the taxable territories on return from leave during the following year.

(b) The dividend income of Rs. 6,000 represents the amount declared by the company in favour of the assessee, but 60 per cent of the company's income was derived from agriculture.

(c) One-fourth of the assessee's house property is reserved for his own occupation. The correct rental value of the other part of the house is Rs 4,800. The assessee's agent charges one-sixth of the rent as his commission.

1) The particulars of his insurance policies are :—

(i) Endowment policies on the life of his wife: Capital sum assured, Rs. 10,000; premium, Rs. 2,000

(ii) Whole-life policy on his own life, Capital sum assured Rs. 10,000; premium, Rs. 500.

(iii) Marriage endowment policy for daughter, Rs. 5,000, payable on the happening of the marriage but not otherwise; premium, Rs. 500.

Determine the total income of the assessee and his exempted income for the assessment year 1951-52.

Solution:

Statement of total income of A for the assessment year 1951-52

1. Income from salary 36,000

2. Income from property— Rs. Rs.

Rent of three-fourth house let 4,800

On the same basis rent of the one-fourth house reserved for personal occupation 1,600

Rs. 6,400

Less:

one-sixth for repairs 1,067

Collection charges—

6% on Rs. 4,800 288 1,355 5,045

3. Income from other sources

Dividend 6,666

Total Income 47,711

Exempted Income :— Rs.

Insurance premiums on his own life policy 500

Insurance premium on the life policy of his wife. 1000

(restricted to 10 p. c. of the
sum assured)

Marriage endowment policy

for daughter, premium	500
	<hr/>
	2,000
	<hr/>

Note :—

(1) Unset off balance of loss of Rs. 4000, from speculation business, in the assessment year 1951-52, shall not be allowed to be set off in the assessment of 1951-52 as there is no income from this business in this year. It must be noted that business losses cannot be carried forward and set off against income from any other business or from any other source.

(2) It is presumed that the house property is not subject to any local tax.

✓ 15. A, B and C are partners in a firm sharing profits and losses in the proportion of two-fifths, two-fifths and one-fifth respectively. The profit and Loss Account of the firm for the year ended 31st March, 1951, is as follows :—

	Rs.		Rs.
Sundry trade expenses	60,000	Gross Profit	1,59,000
Interest on Capital		Dividend gross	5,000
A 	5,000		
B 	3,000		
C 	2,000		
Salary to B	6,000		
Commission to C	3,000		
Net profit ...	85,000		
	<hr/>		<hr/>
Total	1,64,000		1,64,000
	<hr/>		<hr/>

Compute the assessable income of the firm and allocate it amongst the three partners.

Solution

Computation of firm's Total Income:		Rs.
Net Profit as per Profit and Loss Account		85,000
Add expenses not allowed:	Rs.	
Interest on Capital	10,000	
Partner's salary	6,000	
Partner's commission	3,000	19,000
		<hr/>
		1,04,000
Less dividend		5,000
		<hr/>
1. Profit from business ...		99,000
2. Income from Divident...gross		5,000
		<hr/>
Total Income ...		1,04,000
		<hr/>
Allocation amongst partners:	A	B
	Rs	Rs.
		C
		Rs.
1. Interest on capital	5,000	3,000
2. Salary	—	6,000
3. Commission	—	—
4. Share in profit—balance		3,000
divided 2 : 2 : 1.	34,000	34,000
	<hr/>	<hr/>
	39,000	43,000
	<hr/>	<hr/>
		22,000,
		<hr/>

16. The Profit and Loss Account for 1950 of a firm consisting of three partners A, B, and C (with shares 4, 3, and 1), showed a net loss of Rs. 16,000, after charging the following items:

Interest on Capital—A Rs. 3,000
do B Rs. 2,000
Salary to C 3,000

A's taxable income from other sources is Rs. 5,000, while B and C have no other income. Explain how assessment will be made:—

(a) when the firm is registered, and

(b) when it is unregistered.

Solution :

Loss as per Profit and Loss Account Rs. 18,000

Interest on capital Rs. 5,000 and salary Rs. 3,000
are not permissible expenses in the computation of taxable income of the firm.

So if these items are not charged to P and L Account, the amount of loss of the firm will be reduced to Rs. 8,000

This amount of Rs. 8,000 loss will be distributed among the partners as follows:—

	A	B	C
	Rs.	Rs.	Rs.
Interest on capital	+3,000	+2,000	—
Salary to partners	—	—	+3,000
Loss of business	-8,000	-6,000	-2,000
	<hr/>	<hr/>	<hr/>
Net result:	-5,000	-4,000	+1,000
	(loss)	(loss)	(income)
	<hr/>	<hr/>	<hr/>

Assessment when the firm is registered—

Profits of a registered firm are not taxed in its hands, but are divided between its Partners and included in their individual income and taxed along with it.

As such A's share of firm's loss of Rs 5,000 will be set off against his income of Rs. 5,000 from other sources. B has no other income and therefore he can carry forward his share of firm's loss of Rs.4,000 to be set off against his income from the same business in future, according to the Provisions of Section 24 (2). C's share from the firm is a profit of Rs.1,000, but he has no other income. His total income for the year, therefore, is below the taxable limit and as such not taxable.

Assessment when the firm is unregistered.

An unregistered firm is assessed like an individual according to the amount of its total income. If the total income of the firm is below the taxable limit no income-tax is payable by it, but in such a case share of profit of each partner will be included in his total income and taxed in his hands. Shares of profit of a firm which has been taxed are not taxed again in the hands of the partners but they are included in their total income for the purpose of rate.

When there is a loss in a firm the amount of loss can be carried forward to be set off against the profits of the firm in future years. Partners cannot set off their shares of loss against their individual income.

In this case the firm can carry forward its net loss of Rs.8,000, to be set off against its profits in future years. A, whose income from other heads is Rs.5,000, will be required to pay tax on that amount because it is more than the exempted limit, irrespective of the fact that he has shared a loss of Rs.5,000, from unregistered firm.

16. A foreign association of France, carrying on business in the Taxable territories of India has been declared a company for the purposes of the Indian Income Tax Act. During the year ended 31st March, 1951, this association had the following income :—

Income-Tax and Law Accounts

55

1. Banking Profit at Calcutta	25,570
2. Dividend income (gross) from a rupee Company in Bombay	2,250
3. Agricultural income in U.P.	2,000
4. Banking Profit in France retained in France.	25,000
5. Income from landed Property in South Africa not brought into taxable territories	4,000

Prepare the Company's assessment for 1951-52, and determine the tax payable.

Solution :

Company's Assessment for 1951-52:

A. Income in the taxable territories :		Rs.
1. Banking Profits at Calcutta		25,750
2. Dividends—gross		2,250
		28,000
B. Foreign Income :		
1. Banking Profits in France		25,000
2. Property income in South Africa		4,000
		29,000
C. Total income of the Company :		
1. Income in Taxable territories		28,000
2. Foreign income ...	29,000	
Less statutory allowance	4,500	24,500
		52,500
Income-tax on Rs.52,500 at 4 annas per rupee		13,125-0
Super-tax on Rs.52,500 at 4 annas 9 pies		13,371-15
		26,496-15
Less rebate of one anna per rupee Rs 835-12		
Less tax deducted at source	562- 8	1,398-4
		Rs. 25,098-11
Tax Payable		

Solved Questions

1. For determining the residence of the company its total income in the taxable territories (including the agricultural income in U. P.) is Rs 30,000, while the foreign income of the company is only 29,000. Therefore, the company is assessed as resident and ordinarily resident.

2. Agricultural income in U. P. will neither be included in total income nor it will be taxed.

— — — —

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